

American University in Cairo

## AUC Knowledge Fountain

---

Theses and Dissertations

---

2-1-2017

### Khul' in Egypt Between Theory and Practice a Critical Analysis for Khul' Implementation

Nivine Samaha

Follow this and additional works at: <https://fount.aucegypt.edu/etds>

---

#### Recommended Citation

##### APA Citation

Samaha, N. (2017). *Khul' in Egypt Between Theory and Practice a Critical Analysis for Khul' Implementation* [Master's thesis, the American University in Cairo]. AUC Knowledge Fountain. <https://fount.aucegypt.edu/etds/654>

##### MLA Citation

Samaha, Nivine. *Khul' in Egypt Between Theory and Practice a Critical Analysis for Khul' Implementation*. 2017. American University in Cairo, Master's thesis. AUC Knowledge Fountain. <https://fount.aucegypt.edu/etds/654>

This Thesis is brought to you for free and open access by AUC Knowledge Fountain. It has been accepted for inclusion in Theses and Dissertations by an authorized administrator of AUC Knowledge Fountain. For more information, please contact [mark.muehlhaeusler@aucegypt.edu](mailto:mark.muehlhaeusler@aucegypt.edu).

# **Khul' in Egypt Between Theory and Practice a Critical Analysis for Khul' Implementation**

A Thesis Study Submitted by:

**Nivine Samaha**

To the Department of Arab &  
Islamic Civilizations

**Spring 2016**

A partial fulfillment of the  
requirements for  
The degree of Masters of Arts

**Adviser:**

Professor Dr. Mohamed Serag (Islamic Studies)

**Readers:**

Dr Hoda El Saadi (Arab Islamic Department, ARIC)

Dr Noha Bakr (Political Science Department)

# **Acknowledgments**

I owe the successful completion of this thesis and much of my academic progress to the dedicated supervision of professor Dr. Mohammed Serag, without whose constant help, precious advice and much needed support, not to mention his patience and kindness, I would not be writing these words now. I am really so grateful for him for shaping my beliefs and making my learning experience throughout the past five years a valuable one. I am also genuinely indebted to Dr. Hoda El Saadi & Dr. Noha Bakr for their continuous assistance, friendly guidance and sincere support during this journey. I wish to extend my thanks and convey my sincere appreciation and gratitude to my family members, my mother, my husband, my sister and my children Aya , Mohamed, and Ibrahim for their relentless care and unfailing support, and a special dedication to my late father, whom I wished he was still with me today to cherish this moment, but I rest assured he is proud of me.

## Outline

Glossary.....	1-3
1- Chapter One	
a- Introduction.....	4-8
b- The Methodology of the Study.....	8-9
c- Methods of collecting data.....	9-10
d- Thesis Content.....	10-11
2- Chapter Two	
a- Divorce in Islam.....	12-15
b- Definition of Khul'.....	15-16
c- The Religious and Legal Reference of "Khul'" .....	16-25
➤ Qur'anic verses- Reference from Quran	
➤ Prophetic Tradition- Reference from Sunna	
d- Differences pertaining to Khul' along Religious schools.....	25-26
3- Chapter Three	
a- Historical Development of Family Laws in Egypt.....	27-38
➤ Ijtihad: Takhayyur- Talfiq	
➤ Law No. (25)/ 1920 and Law No. 25/ 1929	
➤ Law No. (44)/ 1979	
➤ Law No. (100)/ 1985	
➤ Law No. (1)/ 2000 "Khul' Law"- Group of the Seven	
➤ Law No. (11)/ 2004- The Family Courts Law	
b- Controversies against the Khul' Law.....	38-59
➤ Constitutionality of the Khul' Law	
➤ Authenticity of Khul' Law- historical survey	
➤ Dismantling the Egyptian Family	
➤ Jeopardizing Husband's Supremacy	
➤ Favoring rich women only	
➤ Enhancing Informal Marriages	
4- Chapter Four	
a- Reasons for khul'.....	60-65
b- Demerits of khul' Law.....	65-68
c- Merits of Khul'.....	68-69
d- Recommendations.....	69-74
e- Conclusion.....	75-76
5- Appendix.....	77-104
6- Bibliography.....	105-109

## **Glossary**

Al Jomhur: the majority of jurists and lawmakers

Amin Ser El Galsa: secretary of the 'hearing " or secretary of the court committee.

Badal: any kind of compensation that a wife donates her husband, in return for Khul' , it could be anything instead of her dowry i.e a house, a land, breastfeeding her babies etc

Bait El Ta'a: house of obedience provided by the minimum required for a woman of her class where a husband is allowed to incarcerate disobedient wives to be dragged by the police till 1985

Darar: Harm

Faskh: Annulment

Fatwa: reasoned opinions of adequately qualified and leading jurists

Fiqh: Islamic Jurisprudence accumulated over centuries

Galsa: court hearing or committee

Hadana: Custody of Infants

Hadith: Prophetic tradition

Hudud ALLAH: God's provisions and injunctions ordained to mankind for regulating their life affairs

Ibra'a: Act by which a wife absolves her husband of all financial obligations in return for divorce

Idda: awaiting months period following a husband 's death three months & in case of divorce four months & 10 days during which a wife cannot marry another man

Ijtihad: speculative thinking, national thought of Islamic Fiqh & Shari'a

Ishhar: Public

Isma: the one who's hands is the marriage tie, a Qur'anic concept introduced in personal status law 1925

Kafa'a: social parity

Kafa'a: wife's obedience to her husband

Kafir: atheist

Khala'ha: divorced her

Khul' Divorce in which wife compensates husband in return for divorce

Kit-Kat: a shanty district in Cairo where one of the personal status court buildings is located

Ma'dhum: clerk who officiates in a marriage or a divorce, a notary

Madhhab: School of Law

Mahr: Bridal of Nupital Gift

Mahr: Dowry

Mu'akhar: Advanced dowry paid at the time of marriage

Mu'akkar Sadaq: Delayed dowry

Muqadam: delayed dowry to be paid at the time of divorce or the husbands' death

Mut'a: indemnity

Mut'aa: compensation supplies enjoyment

Muwazaf: civil employee

Nafaqaa: financial support

Nafaqat Hadana : A sum of money to be legally assigned to the mother in return of raising her children

Nushuz: disobedience

Qadi: Judge

Qiwama: guardianship or support

Qubul Shar'i: acceptance

Shabka: A golden or diamond marital gift donated to the bride upon engagement

Shari'a: Religious laws extricated from the divine provisions

Shari'aa: It's an amalgam of a divine revelation on one hand & a working out of series of great Jurisconsults on the other hand.

Shiqaq: disagreements- dichotomies

Sunnah: Prophetic traditions, utterances, actions, and daily life behavior of the Prophet (peace be upon him)

Takhayyur: choosing, selecting, picking up eclectic principle, adopting elements from the other three schools of law in an eclectic manner, seeking more flexibility, malleability

Talaq Bai'in Baynuna Soghra: Revocable divorce

Talaq: husbands' unlimited right to repudiate his wife

Talfiq: patching up

Taqlid: imitation: strict adherence to established doctrine

Ulama': religious authorities, Jurists, law makers

Uqdat Nikahi : The marital knot

Urf: customary or traditional law, Common law

Wakil: agent: proxy, person with a power of attorney

Waliyy: legal guardian

Waqfs: religious endowments

Zananiry: almost the biggest personal status court in Cairo

Zawaj: marriage

# Chapter One

“Islamic Law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and Kernel of Islam itself”<sup>1</sup>

“Joseph Schacht”

## INTRODUCTION:

As a Prelude, Law is a social Phenomenon that reflects the culture of the society producing it and adapts to the Requirements of the environment in which it exists being a fundamental element of its structure and cultural character.<sup>2</sup> However, this is not always the case in reality and in order to detect the level of accuracy of Schacht’s comment and to what extent it walks in conformity with the mundane practicalities, this study is being presented to critically re-assess the “Khul” Law implementation in Egypt throughout the last fifteen years since its’ first emanation in year 2000, by the advent of the Millennium, till nowadays, and to define the discrepancies between its’ theoretical perspective as a coded article in a Law and its actual application on the society itself .

Having Egypt as a paradigm in this Thesis study, the Statutory Laws were positively presented holding a sway in the fields of Public Laws (constitutional and Criminal) and of Civil and Commercial Transactions pertaining to Economy, Politics, Finance etc.. in a piecemeal erosion of the religious establishment towards Secularization in the modern period , whereas the Personal Status Law that regulates all Family Affairs had always been a stronghold of the Shari’a which is constantly deemed as a derivative of a divine holy edifice that should be kept untouched<sup>3</sup>. Invariably, this distinction created for women an awkward dichotomy between their roles as citizens of the state who should be treated equally with men

---

<sup>1</sup> Anderson, P. (1) After Joseph Schacht, P. (1)

<sup>2</sup> EL Alami , P. (1)

<sup>3</sup> Coulson , P.(150)



and, meanwhile, as members of a religious community which endows the husband a substantive leverage that he could unilaterally disband his Marital Bond without even informing his wife .<sup>4</sup>

Such a Legal gendering with its' complexity and multi-dimensionality, generally attributed to the nineteenth century Law codifications , created a split that enervated women's status on one hand and opposed the equality that Islam advocated for on the other hand, was thought to be a step forward towards developing the Islamic Jurisprudence as a response to efforts of the enlightenment intellectuals and the feminist activists which appeared by the second half of that era , hitherto, calling for emancipating wives from the Patriarchal subservience to their husbands through more reforms.<sup>5</sup> In fact, Egypt was a prime crucible of the process of transformation and the struggles about the meaning of gender that has repeatedly erupted and was reflected in the promulgation of several Personal Status Laws aimed at regulating family affairs. The amendments of divorce Laws started by Law No.25 in 1920 and was adopting the Hanafi Conservative School of Law that hardly gave three limited conditions for a wife to ask for divorce, ensued by Law No.25 in 1929 (amended by Law No. 100/1985 ) that defined nine more cases of “divorce for Harm” , to be discussed later, through which a wife is allowed to annul her marriage .<sup>6</sup> It is noteworthy here that Jurists made use of “ijtihad” to select from the Maliki School of Law whatever provisions providing wider chances for a wife to find a way out of an undesirable marriage through “Takhayyur“ and “Talfiq“.<sup>7</sup> Then the revolutionary Law No.44/1979<sup>8</sup> was promulgated granting a wife the right to “divorce for harm” due to Polygamy, yet it was revoked afterwards and was replaced by Law No.100/1985 with less liabilities for women via Judicial repudiation.<sup>9</sup>

---

<sup>4</sup> Sonbol , P. (7)

<sup>5</sup> Ahmed, P. (3)

<sup>6</sup> Cornwall, and Edwards . P (36)

<sup>7</sup> Coulson, P. (185)

<sup>8</sup> Also was referred to as “Gihan's Law” President Sadat's wife who was supporting the promulgation of the Law

<sup>9</sup> Al Alami, P. (131 to 135)

After a decade and a half, Egypt was rocked by a new unprecedented procedural Law of Personal status No.1/2000 that was soon nicknamed the “khul’ “ Law, (No-Fault Divorce) as the Article 20 enables a wife to divorce her husband irrevocably without including his consent on the repudiation irrelevant,<sup>10</sup> yet, she has to ransom herself by renunciation of her financial rights (advanced and belated dower) as a sort of compensating her husband for the marriage expenses <sup>11</sup>. A group of women activists called the “Group of Seven” were behind the enactment of the Law as they conglomerated in an eclectic coalition , was referred to afterwards as The Personal Status Law Coalition (PSL) , comprising Lawyers,<sup>12</sup> activists, and members of the Judiciary. Although they were so keen to gain a strong religious ground by referring to the EL Azhar authority to acknowledge The “Khul” Law’s Islamic Authenticity in an attempt to avoid the fate of Law 44/1979 ‘s abolishment<sup>13</sup>, and although their tactics worked out in passing the Law unscathed, yet, being an extremely controversial issue, “Khul’” provoked a highly contested argumentation stirred up by Islamists and traditionalists (Orthodox) who accused the Law of dismantling the stability of the family and the society as well.<sup>14</sup> Many Fundamentalist’s’ uproars and accusations were ready to hamper any social or feminine reform attempt, and the criticism has been rapidly politicized and immediately led to a religious protest and resistance to the Law.<sup>15</sup>

Such a dilemma was the pivotal thrust for this study to depart from the mainstream evaluation and look at the aim of the reform through delving deeper into the Khul’ Laws Procedurals and exploring the effects and consequences of the Law implementation on women within these social and ideological challenges. It also attempts to evaluate how far did this Legal Reform succeed to fulfill its targets in removing the hardship inflicted on a devastated wife and offering her off -springs a better chance for living. It exclusively concentrates on the reform movement as follows : The historical background pressures led to it , its philosophy and methods, its’ achievements and results as well as its problems and prospects, was it a

---

<sup>10</sup> Al Sawi, P. (51)

<sup>11</sup> Sharmani P. (13 to 15}

<sup>12</sup> Among them was Mona Zulficar the famous Lawyer and Thinker

<sup>13</sup> Singerman, 2005 P.(22)

<sup>14</sup> Fawzy P. (39)

<sup>15</sup> Mernissi P. (8)

satisfactory outcome or just a partial improvement that leaves many unresolved issues as social explosives threats? The study's arrangement attempted at acquiring a considerable advantage for making the entire reform movement more intelligible and at the same time arouses many questions why did this movement begin? By what means has it been carried on? Is there a chance for solving the stranded problems and what predictions could be done for a foreseeable future of the Egyptian Family?

Moreover, it addresses in different contexts the structural gender inequalities through the empirical research insights, across family courts in Egypt, that weaves together fine-grained ethnographic studies of processes, perceptions and institutions with analysis of shifts in Law and policy . Interestingly, many novel findings accidentally and surprisingly popped up while investigating different aspects of “Khul” Law implementation; what so called “ The Hidden Pathways” or the otherwise invisible routes, commonly pervasive in middle and low economic classes, that women could select to gain more empowerment and find her way to maneuver for evading any loss in her financial rights in defiance of the strict state Laws <sup>16</sup>.

The aim of the study is to re-examine the “Khul” Law implementation in relation to many perplexed issues prevailing and framing the Egyptian society nowadays: i.e. the reversal of gender-role within the majority of the population especially in poor areas vis –a-vis the traditional marriage role model as portrayed in Islam where Husbands are responsible for the economic sustenance of his family, and the wife in turn should bear full obedience to him, but does this institutional model fit with the present living experiences of the Egyptian women and men ?

Throughout the study, a number of queries will be attempted to be answered as although Egypt had witnessed substantial reforms in the family Law after persistently mounted attempts of feminists, liberalists and activists for decades, yet many heated debates are still invigorating the social arena with cries of inequality and calls for more Legal reforms as they claims that the Egyptian Society

---

<sup>16</sup> Cornwall, P. (3)

is a misogynist one controlled by a long lasting legacy of patriarchy and a set of rudimentary social customs that is more powerful in shaping the societal behavioral patterns than the Legal Law itself<sup>17</sup>. Besides, many activists and famous writers criticized the “Khul” Law with another claim that it favors only the rich women as the litigant has to forfeit all her financial rights in return of her freedom<sup>18</sup>. In fact, the validity of all the aforesaid queries and claims had to be meticulously scrutinized through this study by analyzing both the religious and social discourses aroused at the surface during the last fifteen years since the initiation of the Law till now, as all these arguments revolve around one axis that brings up the proposed hypothesis to the fore, namely “The “Khul” in Egypt between Theory and Practice”.

### The Methodology Of The Study:

The Methodology proposed in this evaluation is the Socio-Legal approach as both the social and Legal lines are meticulously correlated together through tangled threads imposing themselves as a best tackling way for the “Khul” issue. Invariably, still the watchword and the sole reason for any Legal reform is the “social interest” as Laws are being issued due to social strains that enticed jurists to seek more modernized re-interpretations for the Qur’anic Verses and the Prophetic Traditions to extricate new flexible Laws aiming at more malleability to mitigate life rigorousness and best serve the society.<sup>19</sup>

Surprisingly, Laws promulgated after painstakingly efforts for ages, like “Khul” Law are not always being met with a lukewarm acceptance due to many outdated norms (‘Urf) entrenched in the Egyptian Society, manipulating and refiguring women’s responses and creating social impediments that curb the efficiency of the Law implementation, and supporting the study’s hypothesis. i.e. an Egyptian woman is still afraid, tacitly if not overtly, of experiencing “Khul” lest she would be deemed by the society as a careless apathetic wife who wants to ransom herself to endeavor an unbridled freedom. This mode of thinking is mostly omnipresent in

---

<sup>17</sup> Sharmani , P. (10)

<sup>18</sup> Fawzy , P.(63)

<sup>19</sup> Sonnenveld , P. (21) , P. (39)

the high economic and social standards rather than that in low classes for many reasons as will be discussed further.<sup>20</sup>

Moreover, a decision was taken to display Jurisprudence development and Laws codifications of the antecedent epoch , with its various adjoined precedents, chronologically (from a historical perspective) attempting at unraveling many issues that have been vaguely mooted over years and seeking a coherent understanding for the argument that will follow. Expounding the study anecdotally would profoundly function in investigating the links between the historical background of the Law and its' socio-legal context with diligence to pry into the past actions seeking a better visioning for the future manifestations.

### Methods of Collecting Data :

The method of collecting data in this study mainly depends on an amalgam of the traditional old references as Primary and secondary sources of books, periodicals, official newspapers, statistics for both Khul and Divorce during the past fifteen years (from the Central Agency for Public Mobilization and Statistics in Salah Salem Road, and from the Ministry of Justice through Center of the Specialized Courts in Lazoghly) with consideration to hold a comparison between both rates in Pre and Post the Revolution of 25 January 2011 and record the remarks, as well as a full utilization of the technology and the modern innovations like internet through the online interviews and talk-shows for eminent Lawyers, Jurists and representatives of the state's religious institutions (Azhari Sheikhs). The study also made a big emphasize on randomly selected Court Cases analysis from the Official Family Court Registry of North Egypt (Kit - Kat). It is noteworthy here to state some hurdles faced the process of my data collecting as I never thought it would be that cumbersome and hectic to deal with the governmental institutions with its' bureaucracy and old fashioned style of work in complete absence of any technological devices as the only computerized court, albeit in a very limited scale, is that of Zananiry, being almost the biggest in Cairo. In fact, I was so optimistic to expect finding the information readily available and easily accessible for any

---

<sup>20</sup> Voorhoeve P. (89)

researcher, yet I failed to reach any “Khul” statistics in the “Central Agency for Mobilization and Statistics”, but instead , there were statistics of Divorce in general for the last fifteen years which would have been of no use for my comparative study. However, I luckily managed to get the proposed data through personal connections with Lawyers who randomly picked up Khul and Divorce data of Pre and Post the Revolution from five different Official Court Registries in North Cairo (Shamal El Qahira) and another five Official Court Registries in North Giza (Shamal El Giza) through the” Secretary of the Hearing” (amin ser el galsa)<sup>21</sup>. Meanwhile, by resorting to “The National Council For The Social And Criminal Research” seeking such statistics, they did not recommend my using of their statistics as they claimed it’s inaccurate, so a researcher cannot’ build up any scientific results based on it and that it is much better to get a more credible statistics from a governmental institution as they themselves do in any research. Going online through the Ministry of Justice website, some of the proposed information, albeit missing some details, were accessible only till 2014, whereas to make up for the missing information as much as possible, I contacted the aforesaid Court Registries. Nevertheless, visiting the Personal Affairs Court several times as well as other governmental institutions, organizations and the Ministry of Justice, together with encountering these “Khul” cases in real life was an extremely newfangled experience that was worth to be enjoyed.

## Thesis Content:

This research is divided into Four chapters, Chapter one consists of the Introduction, including a synopsis of the whole study, a brief account of “Khul”, the birth of the “Khul’ Law in modern time (2000), the study methodology, methods for collecting data and the proposed hypothesis of the work.

Chapter two includes full details of the word “Khul” as a definition (both Literal and Technical meaning) , the religious reference of khul’ (the Qur’anic Verse and

---

<sup>21</sup> (amin ser el galsa) the person responsible for writing the details of the court cases as well as filling and checking out the papers of every case in order. He should be present in the “Hearing” (galsa) with the committee to write after the litigants every and each detail and register the wife’s answers to all the questions.

the Prophetic Tradition), different views among the four schools of Fiqh (Shafii's – Malikis – Hanafis – Hanbalis) pertaining to "Khul", legal differences between "Khul" and divorce and the implications of both on the divorced women.

The core of the study is shared amongst both Chapter Three and Chapter Four. The Third Chapter displays a historical background of "Khul" Law since the first canonization of the family Law in Egypt in 1920, followed by another development at the same year, then followed by another Personal Status Law in 1929, then an amendment in 1979, followed by another amendment in 1985 till the birth of the Personal Status Law No. 1/2000 (The Khul' Law)<sup>22</sup>, with full details of the antecedent events coincided with the appearance of each and every Law as well as their implications on the Egyptian women and the society as a whole. Moreover, This chapter expounds the controversy that accompanied the codification of the "Khul" Law and the high contention between the opponents and proponent, with the feminism activists who are backing the Law, and the Islamists and fundamentalists who vehemently opposed it, each party is defending his discourse with evidences and proofs.

The fourth chapter discusses the merits and the demerits of the Khul' Law on the Egyptian woman through a modern understanding by representing the case of Egypt during the last fifteen years to assess the efficacy level of Law implementation, and the discrepancies between its existence as a code in a book and the spirit of its application in everyday life. The findings of such an assessment would depend, to a great extent, on statistics and court record analysis to obtain the most accurate results. The chapter would also convey some suggestions and recommendations from Lawmakers for some amendments in the Law and the Legal procedures to reach better results. Chapter four ends up with the conclusion that although Egypt has witnessed a stupendous development to improve women's status by canonizing the "Khul" Law, yet what is really more important to attain is to get people to acknowledgement, and to break the outdated Patriarchal beliefs and learn how to practice the Law soundly and amicably.

---

<sup>22</sup> Mutawei , P. (282)

## Chapter Two

“ And among His signs is this, that He created for you mates from among Yourself, that you may Dwell in tranquility with them, and He has put love and mercy between your hearts. Verily in these are signs for those who reflect”<sup>23</sup>

Marriage continues to be an important social institution in which both spouses expect a happy stable life based on the Islamic injunctions of mutual mercy and kindness as expressed in the above verse and many other Qur’anic verses. Islam is known to be the faith of high spirituality as well as being an integrated societal project based upon a cornerstone of justice and equality to the entire mankind deeming women as a contribution for one half of the society and, meanwhile, is the mainstay of the other half through its’ pivotal role in raising up her children.<sup>24</sup> The holy Qur’an addressed both man and women equally as follows : “ And they (women) have rights (over their husbands) similar (to those of their husbands) over them to what is reasonable”.<sup>25</sup>

### Divorce in Islam :

People in Egypt invests to find a partner and seek stability, security and economic alliances between families as religion entitled a wife intrinsic rights and privileges to safeguard her status through regulating both Marriage and Divorce by stringent rules ordained by God aiming at maintaining equilibrium in such a relation-ship<sup>26</sup> as eloquently ordained in this verse “Retain wives honorably or release them with clemency”<sup>27</sup>.

---

<sup>23</sup> A verse from the Holy Qur’an Suret AL Room ( 30:21) The translated Qur’an, from the Article of Divorce and the Law of Khul’ by Ashraf Booley

<sup>24</sup> Mashhour, P. (562)

<sup>25</sup> Qur’anic verse (2:228) Suret AL Baqaraa

<sup>26</sup> mernissi, P. (48)

<sup>27</sup> Qur’anic verse (2:229) Al Baqara



However, when it comes to practice, the level of response of jurisprudence to such Islamic injunctions is not that adequate in providing a wife the amount of merits endowed to her by the divine rules as the standard of judicial domain and flexibility varies from time to time and from place to place due to many social, political and economic reasons<sup>28</sup>.

As a result, The Islamic Law grants a husband the right to terminate his marriage contract unilaterally, at will, on the spot and without litigation as the wife's approval is immaterial, and he compensates her by donating the belated dower (mu'akhar al sadaq) and providing maintenance that befits her economic and social standard.<sup>29</sup> But if the wife wishes to depart her husband and break the marriage contract, from her side, then she has two options, if her husband is mal-treating her or if there is any other kind of harm is inflicted upon her as a result of this marriage, she has to file a case against him in the family court and try to prove this darar in front of the judge with valid and legally acceptable reasons justifying her plea. If the (Qadi) is convinced, she is granted a judicial separation and the husband becomes liable to remuneration by donating her all her financial rights. The other option if she fails to prove her case in front of the court or if she simply desires depart a husband who is not at fault, she has either to resort to an amicable mutual agreement with her spouse for a dissolution of their marriage with some compensation of her part, or she could ransom herself and ask for "Khul<sup>30</sup>," that has recently been codified as a Law to maintain a sort of equilibrium in accessibility to the right of Divorce between both spouses.

"Of all things licit, the most hateful to God is divorce"<sup>31</sup>

Divorce is heavily disapproved by both the Sunnah as expressed in the above Hadith as well as another Utterance for the Prophet " Let not the faithful man hate

---

<sup>28</sup> Ahmed, Leila , P. (128)

<sup>29</sup> Fawzy P. (61)

<sup>30</sup> AL Maraghi, P.(229)

<sup>31</sup> A concise Encyclopaedia of Islam, Cyril Glasse, Stacey International . London 1989, P. 100 After the Propetic Tradition recorded in Sunan Abi Daouwd (2177) chapter of divorce(talaq), Sahih Muslim no.(671), Ahmed (4/181)

the faithful woman; if he dislikes some of her habits, he may like others.”<sup>32</sup> Also the Qur’an grossly discourages dissolution of marriage as in the following verse “And remember when you (Muhammed) said to the man (Zayd, Muhammed’s adopted son) whom Allah and yourself have favoured : keep your wife and have fear of Allah”<sup>33</sup> In this verse, there is an implicit disapproval for divorce while in other verses the Qur’an clearly discourages Muslims for having recourse to hasty decision to annul their marriage as came in the following verse “ Treat them with kindness; for even if you do dislike them, it may well be that you dislike a thing which Allah has meant for your own good”.<sup>34</sup> And another utterance to Ali bin Abi Taleb<sup>35</sup> says “ Marry and do not divorce your wives, for divorce causes God’s throne to tremble”.<sup>36</sup>

Notwithstanding the aforesaid, this is not to preclude that Islam omitted the possibility of divorce, yet in a lesser of the two evils when the alternative is a disastrously miserable marriage, adopting the principle that married spouses should not be pushed to keep a union they found unbearable, and which causes them great distress and agony. Accordingly, an entire chapter in Qur’an was devoted to the issue of divorce “Surat Al Talaq”<sup>37</sup>, and it was also introduced in many other Qur’anic verses in various chapters setting a certain criteria for the dissolution process.<sup>38</sup>

Discrepancies between husband’s and wife’s perceptions of their marital obligations towards each other might lead to disputes, and springing up from the Juristic principle (no harm shall be inflicted or tolerated in Islam) “ La darar wa la derar” failure of both spouses to meet these duties (Hudud Allah) is an adequate and

---

<sup>32</sup> Adamu , P.(62), After Sahih Muslim, Book of “Irda’a” bab “al waseya bil nisa’a”- hadith no. 1469

<sup>33</sup> Qur’anic verse (33:37) AL Ahzab

<sup>34</sup> Qur’anic Verse (4:19) AL Nisa’a

<sup>35</sup> one of the great companions and the cousin and son-in-law of the Prophet Muhammed, peace be upon him, and the first child to enter Islam.

<sup>36</sup> Dorph, k. jan , “Islamic Law in Contemporary North Africa” in Azizah al Hibri (ed) “Women and Islam” P. (172)

<sup>37</sup> Surat a”AL Talaq’ or (The Divorce) is the Chapter no. (65) in the holy Qur’an, consists of (12) verses with the first half of the Chapter (from verse (1) till verse (7) inclusively speaks about divorce provisions).

<sup>38</sup> Al Mishni, P.(48) to (54)

valid religious ground for the dissolution of the marriage as “nushuz” due to many jurists is not a necessary prerequisite for “Khul”.<sup>39</sup>

Obviously, the concept of Darar to a wife could be attributed to many reasons with varying degrees as feeling aversion towards a husband who's not at fault, or being emotionally humiliated by word or action, or polygamy or being subjected to actual perils that jeopardizes her life leading to disagreement and hence a misogamy (shiqaq).<sup>40</sup>

### Definition of “Khul” :

#### The Literal Meaning (origin of the word):

The etymology of the word “Khul’ originates from the root Kh-a-l’ - , and the verbal noun Khala’ which refers to the act of extraction or detaching or tearing- out or removal, generally associated with things or objects that could be taken off such as garments and vestments.<sup>41</sup> The reason for such a name refers to the Qur’anic Verse “ They are an apparel (garments) to you, as you are an apparel (garments) to them.”<sup>42</sup> The verse explains that just as a garment covers a person completely and provides him/her with warmth and protection, in the same way a husband and a wife provide each other with the necessary warmth, comfort, intimacy and protection (Actually, the Qur’an here expects both partners to behave the best manner towards each other) and vice versa, if the wife wishes to depart her husband she takes off her garment.<sup>43</sup>

---

<sup>39</sup> Kahlawy P. (670

<sup>40</sup> Al Mishny P. (131)

<sup>41</sup> Al Sawy, P. (74)

<sup>42</sup> Bukhari , vol. 1, P. 181-2, a Qur’anic verse , (2:187) AL Baqaraa

<sup>43</sup> Dr Soad Saleh , Professor of Comparative Fiqh at the Azhar University , The information was taken after her as she was represented in a highly contested debate in a the T.V.programme called “bi wodouh” on Al Hayah Channel presented by Amr El Lithy on Sunday 13/12/2015, A talk-show presenting also Lawyer Nabih El Wahsh representing the opposing extremist legal stream, Dr Ahmed Kerimah Azhari Sheikh and Professor of Shari’a and Comparative Fiqh in El Azhar University presenting representing the traditionalist conservative religious stream, and Mrs Manam El Tayeby a feminist activist and a member in the higher council of Human Rights representing the feminism stream.

### Technical Meaning:

In its legal context, “Khul” is the marital extraction or the act of husband’s accepting remuneration from his wife in exchange for her freedom from the marital relationship.<sup>44</sup>

### The Religious and Legal Reference for “Khul”:

- Qur’anic Reference :

The dissolution of Marriage came up in three different verses in Qur’an:

1-“ The divorce is twice, after that either you retain her on reasonable terms or release her with kindness, and it is not lawful for you men to take back your wives mahr (bridal gift) which you have given them, but if you fear that you will not keep within the limits of Allah (Hudud Allah), then there is no blame upon either of them concerning that by which she ransoms herself.

These are the limits of Allah, so not transgress them, and whoever transgresses the limits of Allah, it’s those who are the wrongdoers.”<sup>45</sup>

2-“ And if you fear a breach between a man and his wife, appoint an arbiter from his people and another from hers, if they wish to be reconciled, Allah will bring them together again- Allah is Knowing wise”<sup>46</sup>

3-“And give the women whom you marry their (mahr) with a good heart, but if they, of their own good pleasure, remits any part of it to you, take it and enjoy it without fear of any harm (as Allah had made it lawful).<sup>47</sup>

- The Prophetic Tradition :

---

<sup>44</sup> Al Kahlawy, P. (57)

<sup>45</sup> Qur’anic verse (2:229) Al Baqaraa

<sup>46</sup> Qur’anic verse (4:35) AL Nisa’a

<sup>47</sup> Qur’anic verse (4:4) AL Nisaa’

The case of Thabit bin Qais bin Shammās and his wife Habiba bent Sahl is recognized as the first case of khul' in Islam and was recorded in four of six major Hadith works<sup>48</sup> as she came to Prophet Muḥammed (P.B.U.H) and said :

“O Messenger of God, I do not hate Thabit neither because of his faith nor his nature, except that I fear unbelief (not to be able to abide by the limits of Islam). Prophet Muḥammed, Peace be upon him, said “Will you give back his orchard?” She said “Yes” and she gave it back to him and he (the Prophet) said to Thabit “ O Thabit! Accept your garden, and divorce her once”.<sup>49</sup>

Since Thabit's wife was referred to by two different names, in Al Bukhari it was stated she is Habiba, and in Sunan Abu Dawoud she was referred to as Jamila. And according to three articles in Al Ahram newspaper for three most eminent theologians in Egypt, namely, Dr Selim el Awwa , Dr. Mostafa Abo Zeid,<sup>50</sup> and the Judge Dr. Mahmoud Fahmy<sup>51</sup> , they believe that Thabit has two different precedents of Khul' in two different marriages due to the differences in names, and Dr. El 'Awwa added a third precedent that also occurred at the time of the Prophet, Peace be upon him, of the sister of Abi Sa'i'id Al Khudari (one of the Prophets' companions) who came and complained from her husband who also complained from her to the prophet,

---

<sup>48</sup> Hadith Thabit bin Qais has been recorded in these four major hadith works as follows:

- a) Al-Nasa'i, Ahmad b. Shu'ayb, : "Sunan Al Nasa'i bi sharh al Hafiz Jalal al-Din Al Siyuti, ed. Hassan Muhammad al Mas'udi, 8 vols. (Cairo: AL Maktaba al Tijariyya al Kubra, 1930), 5;169.
- b) Abu Dawoud Sulayman b. al ash'ath al Sijistani, : Sunan Abo Dawoud, ed. Muhammad Muhyi al Din /abd al Hamid, 4 vols (Beirut: al- Maktaba al Asriyya, 1980), 2:268-69.
- c) Al Bukhari, Al Imam Abi Abd Allah Muhammad bin Ismail , Fath Al Bari Bi Sharh Sahih Al Bukhari , ed. By Abdel Rahman Mohamad, 17 vols, Cairo: Maktabat wa matba'et Mustafa Al Babi al Halabi, 1959, 9:327.
- d) Al Albani, Muhammad Bin Nasir al Din , Sahih Sunan Ibn Maja, ed. Zuhayr al Shawish, 5 vols, (Beirut : Al Maktab al Islami, 1988) 1:350.

<sup>49</sup> Al Bukhari, see above

<sup>50</sup> Dr. Mostafa Abo Zeid, the former minister of Justice and Law Professor in University of Alexandria., Article in Al Ahram newspaper, P.(28)

<sup>51</sup> Fahmy, Article in Al Ahram newspaper, P.(10)

peace be upon him, and she asked for divorce. The Prophet ordered her to return him back his garden and they were divorced.<sup>52</sup>

Some remarks should be stated in this section:

a) Although the Qur'anic verses alluded to the ransoming procedure with no direct mention to the Word "khul" in particular, yet, the meaning has recurrently been stated in three verses from two different chapters in Qur'an, besides, having more that one precedent of Khul' at the Prophets' time, being acknowledged and even authorized by him and were repeatedly stated in four of the great Hadith books, in addition to having numerous other cases recorded in pre and post Islam as will be discussed later in the Historical Development of Khul's section of this study, all this refute the claims of many opponents who suspected the illegitimacy of the Khul' Law as they considered depending on a sole incident like Thabit's tradition in promulgating such a volatile law is considered invalid and that the Prophet's ruling was only confined to this particular case and should not be generalized to canonize a law<sup>53</sup>.

#### B) The Compensation ( Ransom) :

Verse no. (1) and verse no. (3), together with Thabit's Prophetic Tradition are pointing out to the ransoming process as many controversies were leveled among the four Schools of Law concerning the compensation limits ,the (Badal)<sup>54</sup>, rules, forms and flaws as follows : First of all, there must be a clear distinction between a Khul' that was initiated according to an amicable agreement between both spouses, and a judicial Khul' that has been done through the Court; as for the former , the husband is allowed to accept any amount of compensation endowed

---

<sup>52</sup> Al Awwa, Al Ahram newspaper P, (10)

<sup>53</sup> Al Semary, P.(24)

<sup>54</sup> anything that could be donated by a wife to her husband in return of Khul' is called {badal}

to him by the wife whether it is less or equal or even more than the dower without any transgression over the off-springs rights.<sup>55</sup>

In case of the latter, it has two cases, if the aversion (nushuz) is from the part of the husband who desires to replace his wife by another one so he slanders her off and keeps coercing her deliberately to ask for Khul' and renounces all her financial rights against her will just to emancipate herself from subjugation, then he is prohibited from taking back his dower. In this case Khul' is considered void according to the four Sunni Schools of Law who built up their provision upon the Qur'anic verse : "If you wish to have a wife in the place of a divorced one, do not take from her the dowry you have given her even if it is a talent of gold. That would be improper and grossly unjust ; for how can you take it back when you have lain with each other and entered into a firm contract" <sup>56</sup>

Accordingly, the dower taken by the husband from his wife has to be retained back by her. Khul' here is judged as a revocable divorce as it was against the wife's desire so it is unfair that the husband departs her and deprives her from her financial rights.<sup>57</sup>

The second case, if the aversion comes from the wife's part and against the husband's will and she filed a court case to annul her marriage, then the four Schools of Law agreed upon the husband's right to accept a compensation according to above verse no. (1), yet they disagreed upon its' amount. The Shafiis, the Maliki, Abo Hanifa, some of the Hanbalis, Shi'aa, Thawri and Awza'y and the Zahirayts believes that he could take whatever they agree upon even if it is more or less than the dower <sup>58</sup>, but other jurists like some of the Hanafis and the Zaidis, objected on the increase and considered it reprehensible referring to the Prophet's utterance "As for the increase, No"<sup>59</sup>

---

<sup>55</sup> Booley, P. (51)

<sup>56</sup> Qur'anic verse (4 : 20,21), AL Nisa'a

<sup>57</sup> Kahlawy, P. (74)

<sup>58</sup> Ibn hazm, by Dr. abdel Ghafaar el Nabarawy, Part 9, Page 511, Dar Al Kotob Al 'Elmeya, Beirut, and also Ibn Qudamah, Al Moghny, Part 8, Page 176

<sup>59</sup> Al Semary, P. ( 16, 17)

Implicitly, the validity of “Khul” seems to have only been contested by Bakr bin Abdullah Al Muzani<sup>60</sup> who argued that a husband should not accept any remuneration from his wife as the concept of ransoming (fida’) that has been stated in the Qur’anic verse (2:229) has been abrogated by another Qur’anic verse (4:20) “but if you intend to replace a wife by another and you have given one of them a Quintar.....” . However, the Jurist invalidated his argument by asserting that abrogation does not apply here as ransoming does not depend on (nushuz) of the husband, while the Khul’ verse (2:229) clearly refers to the fear of failing to respect the limits ordained by God for both parties. It seems that he only referred to man in his Khul’ argument with no mention to the right of woman who wants to ransom herself.<sup>61</sup> Hence, Al Muzani’s argument was considered in a number of fiqh books as a discredited reasoning.

### Badal :

All jurists consented on a principle that whatever is agreed upon to be a “badal” for Khul, is agreed upon to be dower and in any form; i.e. money as deferred dowry, renunciation of maintenance (nafaqa ), a land, a garden, a house..etc..

Except if the (badal) for khul implies any harm incurred upon the children like depriving the mother from her children’s custody or giving up the children’s maintenance.<sup>62</sup>

### Remarks on Ransoming:

---

<sup>60</sup> a religious Scholar who died on the year of 264 hijri/878

<sup>61</sup> Abdullah, “Al Talaq wa Al Khul’”, P. ( 59)

<sup>62</sup> Al Ahram newspaper article, P. (23), for Dr, Mohamed Naguib ‘Awadein, Professor of Islamic Shari’a at Cairo University. 17 / April / 2015.



The present study has some remarks on the Literature of the Hanafi, Shafii, Maliki and some of the Hanbali who agrees in any sort of compensation even if it exceeds the Dowry:

- This edict would create a big chance for the husband's haggling over divorce especially if the woman is rich.
- According to this opinion, many theologians and Lawyers as Lawyer Nabih El Wahsh <sup>63</sup>claim that since the actual amount of Mahr is seldom registered in the marriage contract (one pound in most of the cases) , woman who asks for Khul' should be debarred from all her rights not only the dowry but also the golden "Shabka" (Engagement Gift) , and the "Qai'ma" of furniture . Besides, she has to pay back the deferred dowry as a compensation for the husband for the expensive marriage costs<sup>64</sup> . This study replies to such claims by the Prophet's utterance in Thabit's Hadith itself as the wife was willing to give her husband more than the garden, yet the Prophet, peace be upon him, refused and insisted on abiding by the exact amount with no excess. As for the Shabka, the tradition in Egypt for most of the rich brides is mixing together both amounts of the dowry and the Shabka to purchase a stunning and valuable engagement present (golden or diamond) and henceforth separating them from each other would be impossible and returning the amount back to the husband would cost the wife a big sum of money that she could not afford. As for the poor wife, the fieldwork made it clear that the shabka which usually contains gold has often been sold already by the women when their household faces financial hurdles .<sup>65</sup> Concerning the Qa'ima and the deferred dowry, it seems less logical that women is expected to pay them back since the former consists of the wife's own contribution the her conjugal home while the latter is considered her safeguard if her husband dies or if she gets divorced. In addition, how could a woman return back the deferred dowry that she has not received yet as according to the norms ('Urf) it is donated in case of divorce as a mean of

---

<sup>63</sup> Lawyer Nabih El Wahsh was a guest in a T.V. Programme " Bi Wodouh" inaugurated by Amr EL Lithy on "AL Hayah" Channel

<sup>64</sup> Lawyer Nabih El Wahsh, in an interview with Amr El Leithy in El Hayah channel, "Bi Wodouh " Programme, Sunday 13/12/2015

<sup>65</sup> Fawzy, P.(29).

security for the abandoned wife. This would definitely form a burden on both the rich (as it could amount to a large sum of money that she does not own) and the poor who finds herself obliged to pay a completely different amount of money exceeding her potentialities and more than what she already received upon her marriage.

- The Literature of Nadia Sonneveld suggests that the court should investigate thoroughly to find out whether the husband actually paid mahr bigger than the amount registered in the marriage contract or not, as well as investigating his real monthly income to decide a well-matched maintenance for his children.<sup>66</sup>

However, it was commonly recognized that a husband always succeeds in finding a loophole to twist around Law provisions; i.e : A husband often pays inadequate housing expenses for his children and could falsely claim his incapability of paying their maintenance, and if he is a business man who works in a non-governmental institution it would be very difficult to investigate his real monthly income.

Besides, Bailiffs assigned to notify a husband of a court session or an alimony ruling often receive bribes to ignore their duties and inform the court that he could not trace the needed person.<sup>67</sup>

Another dispute aroused by Dr. Mostafa Abo Zeid,<sup>68</sup> who objected on donating the woman, who repudiates her husband, the right for the conjugal home as a dwell to live in with her off-springs as he believes this would be a burden on the man that would be accepted in case of divorce for harm, but not for the woman who desires to depart from her husband who is not at fault. The study replies to that objection with many unresolved questions : What about the wife and her children who need a shelter to live in? what if the wife does not have a family to resort to? Would the alternative be the street and a dreadfully ruining to their future? If providing a house for children is considered a burden on their father then who else would be

---

<sup>66</sup> Sonneveld, P. ( 94)

<sup>67</sup> Human Rights Watch, Supra note 3 and 33

<sup>68</sup> Dr Mostafa Abo Zeid, the former Minister of Justice, and a professor of Law in Alexandria University, P. (28 ) 2000.

responsible for them? What if the wife is sick or old or illiterate or unable to work for any reason?

Then the study suggests a promulgation for a law that provides for the mother a maintenance in return of taking care of her off-springs (Nafaqat Hadana) as her responsibilities in looking after her kids would cripple her from joining any work to provide herself with a financial support .

#### b) The Arbitration:

Verse no. (2) brings up the subject of arbitration to discussion, as the arbiters should be characterized by certain qualifications that enable them to perfectly function in such a thorny task, albeit not mentioned in the verse itself. It was quite discernible from many visits to some family courts in Egypt that there is no definite criteria for nominating arbiters from both sides of the spouses, hence the study goes on comparing between the idealistic embodiment for what should be found in the arbiters and the living reality that actually happens inside the Family courts through arbiters nomination:

- The arbiters should be close to the parties involved and worth yielding their respect and trust as the Qur'an described "If they wish to be reconciled", so the Court has to insist on appointing the two arbiters of the same kinship, if possible, to behave seriously and impartially in their attempts of reconciliation. Yet, what really happens in the courts is that appointing the arbiters goes back to the Judge himself, so if he is a man of a righteousness and piety, he abides by the Qur'anic verse "An arbiter from his people and another from hers", but in many cases, the court nominates two official arbiters who are doing their jobs sketchily with no enthusiasm for patching up things between the spouses if there is a good chance to do so.
- The arbiters should be mature enough, a father or an uncle, to be able to investigate the matter between the spouses peacefully and objectively and come up with sound judgment and solutions for the marital problems with a full awareness of the Oath they pronounced in front of the Court. Also they would be more capable of putting the interest of the wife on an equal footing

with those of her husband with a consideration of safeguarding the interests of both sides at the same time. In many cases the age factor is not taken into account while nominating the arbiters, so a brother of the wife or the husband whose age does not exceed the twenties could be appointed.

Actually, the study does not mean to undervalue the young age but in certain critical cases, a wise experienced and unbiased advice is mandatory as it controls the fate of a woman and her children, and, definitely, a mature voice is more audible and considerable in his family.

- The arbiters have to conduct their mission confidentially and try to settle the disputes and disparities between the spouses in clandestine to avoid embarrassment of revealing extremely intimate and private matters, and not to vilify the reputation of any of the partners as there is no need to state such issues in the case filling. Hypothetically, this characterizes the Khul' and distinguishes it from the conjugal divorce through which a wife has to state all the defects of her husband in front of the Court Committee to convince the Qadi of the harm inflicted on her and win the case,<sup>69</sup> yet realistically, some wives, mainly of low economic and cultural class, do not mind at all divulging their marital privacies openly in side chatting with each other so that it wasn't difficult for the whole crowded room inside the court to hear every single detail. Apparently, what they do mostly care about is to make sure there is no mentioning for their names in any written document whatsoever.
- During the arbitration process the Judge has to make the husband's attendance through the "hearing" incumbent upon him as it was recognized that in most of the cases the husband never shows up or he may send his lawyer or any representative, in addition, it should also be recommended that the jury must hold a lengthily discussion and give more time for the wife to say all her complaints in order to get a concrete idea of the whole case instead of dictating the "Hearing" Secretary a repeated script that is routinely written down in each case the fact that makes the whole arbitration process ineffective as far as the provision is presupposed.

---

<sup>69</sup> Fawzy, P.(23)

Explicitly, it should be noted that the arbiters are mere mediators with no legal authority to enforce their decisions, that if they fail to bridge the gap between the couple, they are not to blame, and should report to the judge who thereunder give only one revocable divorce.<sup>70</sup> (Talaq ba'in Baynuna Shoghra) .

### Differences Pertaining To “Khul’” Among The Schools Of Law :

Tentatively, there is a Juristic consent upon the Legitimacy of Khul’ which was broadly defined by Jurists as “Revoking The Marital Knob” or (Izalat Milk Al Nikah)<sup>71</sup> or putting an end to the marriage upon wife’s consent in an exchange of a substitute (Badal) donated to her husband.<sup>72</sup> However, many debates had aroused among different Sunni Schools of Law upon considering Khul’ a (Faskh) or (Talaq) and each side supported his claim with evidences from the Holy Qur’an and the Sunna as follows:

- As for the Hanbalis and the Shafii schools, the dominant opinion viewing Khul’ is a Revoke (Faskh), among them also Ibn Abbas, Towoos and ‘Ekremah, referring to the same Qur’anic Verse of Al Baqara (2:229), till the verse :

“And if he has divorced her (the third time) then she is not lawful to him thereafter, until she is married to another husband, then if the other husband divorces her, it is no sin on both of them to reunite”<sup>73</sup>

They supported their view by claiming that GOD Almighty stated the divorce here twice, then ensued it by ransoming, then came the third divorce afterwards. Consequently, if Khul’ is considered a divorce, then this makes a sum of four divorces in the verse, which was impossible. Therefore, they asserted its’ being (Faskh) although it was pronounced (Talaq).<sup>74</sup>

---

<sup>70</sup> Shams El Din, P. (310)

<sup>71</sup> Kahlawy, P. (58)

<sup>72</sup> Fawzy, P. (8)

<sup>73</sup> Qur’anic verse (2:230) AL Baqara

<sup>74</sup> Al Mishni, P. (64)

Their second evidence was from the Sunnah by referring to two Prophetic Traditions :

1) The Prophet Muhammed , peace be upon him, ordered Habiba to wait for only one month as a Waiting Period (‘Idda) before entering into another marriage-relationship, should it be a talaq, she would have stayed a Waiting Period of three months due to the Qur’anic verse “And the divorced women shall wait for three menstrual periods “.<sup>75</sup>

2) An utterance of Ibn Abbas that Ibrahim Bin Sa’ad Bin Abi Waqqas asked the Prophet, peace be upon him, about a man who divorced his wife twice, then she ransomed herself from him (Khul). Could she remarry him again or is it prohibited? The Prophet answered “Yes , for the Khul’ is not a talaq, as God almighty stated the talaq once at the beginning of the verse and once at the end of the verse , so the Khul has been stated in between”<sup>76</sup>

- On the other hand (The Majority) “Al Jomhour” of the ‘Ulama’ viewed Khul’ as a divorce, whereas the Hanafi, and the Maliki School, as well as the Awza’ii considered it an irrevocable divorce referring to the same verse ; they believed that a woman ransoms herself to seek her total freedom from the marriage tie and full control over her life, which cannot be attained unless the divorce is irrevocable, so the husband is interdicted from any attempt to retrieve her back.<sup>77</sup>

It is noteworthy to say that the Egyptian Law of Social Affairs no.1 for the year of 2000 declared the Khul’ as an irrevocable divorce (Talaq Ba’in Baynouna Soghra). So if the husband desires to retain his wife back it must be under her consent and with a new marriage contract and a new dower.<sup>78</sup>

---

<sup>75</sup> Qur’anic verse (2:227) AL Baqara

<sup>76</sup> Ibn Kathir , Isma’il bin Kathir Al dimishqy, “Tafsir Al Qur’an Al ‘Azim”, Dar al Ma’rifa , Beirut 1969, P.275.

<sup>77</sup> Qassim, P. (350)

<sup>78</sup> Mutawei’ , P. (195)

## Chapter Three

“ THE EXERCISE OF ‘IJTIHAD’ OR INDEPENDENT JUDGEMENT IS NOT ONLY THE RIGHT, BUT THE DUTY, OF PRESENT GENERATIONS IF ISLAM IS TO ADAPT ITSELF SUCCESSFULLY “<sup>79</sup>

“ COULSON”

### The Historical Development of Family Laws in Egypt :

Ijtihad is the process of deriving Fiqh ( Islamic Jurisprudence ) from the direct engagement with the religious texts through independent re-interpretations of both the Qur’anic verses and the Prophetic traditions to adjust the Islamic Law to meet with the society modern needs and exigencies . Beginning with the twentieth Century, Reformers have applied the method of “ Takhayyur “ and “Talfiq “ aiming at bringing in Reforms through the process of internal revision within the Shari’a.<sup>80</sup>

Takhayyur might take several forms, i.e. in Hadith , jurists could use different versions of the same Hadith in order to come up with a selected interpretation which best serve their interests.<sup>81</sup> Whereas in Fatwas and promulgation of Laws, they could pick up among the four Sunni schools of Law the most appropriate provision that favors the adaptation of law to the evolution of the society and to find solutions to social problems with which it was confronted.<sup>82</sup> As for the Talfiq , the literal meaning is to make up a patch work or to piece together, but if we apply it to jurisprudence, it is the act of ostensible construction of the Legal rules by the combination and fusion of juristic opinions, and the elements of diverse nature and provenance to produce a composite legal system . i.e. : Egypt had an exemplary role

---

<sup>79</sup> Coulson, P. (202)

<sup>80</sup> Lombardi, P. ( 102)

<sup>81</sup> Sonneveld, P.(40)

<sup>82</sup> Anderson P. (51)

in both Takhayyur and Talfiq through adoption of the Maliki doctrine concerning divorce and retention of the Hanafi doctrine in Laws of marriage.<sup>83</sup>

Amira Sonbol argues here that talfiq firstly appeared during the Ottomans' age, and it was a kind of merging together bits and pieces of western laws with interpretations of several schools of law to create a bundled Islamic package called "the Personal Status Law" that did not receive distinct status at that time due to introducing it as a separate Personal status law.<sup>84</sup> Definitely, Sonbol could have a point in her argument as the idea of having such legal constructs as separate personal status law was relatively awkward for that age, for it started to be familiar and gain acceptance by the advent of the twentieth century through the enlightenment intellectualists movements (Al Afghani, Al Tahtawy, Mohamed Abdou and others ), yet, being the first attempt for reform of women's status in the contemporary age gives it a pioneering value that should be venerated. Besides, it heralded for other reforms to ensue.

" It is often asserted that the differences in doctrine among the Sunnite schools are of relative insignificance compared to their essential agreement, and that their respective systems have the same fundamental structure and principal institutions of Law, and diverge only on subsidiary particles."<sup>85</sup> "Watt"

The study considers the above Quotation of Montgomery Watt, admittedly right, for the agreement is presented in an array of fundamental subjects like dowry, child custody...etc., however, there are some issues which provide a clear-cut distinction between one school and another and can hardly be considered subsidiary points of detail, like Divorce. . While all the Schools of Law agree that the extra-judiciary termination of marriage could be done either by the husband's unilateral annulment or by mutual consent, they basically disagree to the ground upon which it is annulled through a judicial decree. The Hanafi School of Law hardly allows the wife to ask for divorce except in only one condition, which is the husband's sexual

---

<sup>83</sup> Coulson, P. (197)

<sup>84</sup> Sonbol, "Women, The Family and Divorce Laws in Islamic History " ,1996, P. (277)

<sup>85</sup> Watt, P. (96)



impotency. On the other hand, the Maliki school acknowledge the wife's right to ask for divorce due to many reasons, the husbands desertion, mal-treatment, abstinence of financial maintaining, sexual incapacity, illness with a chronic or incurable disease that jeopardizes the wife's life if she stays with him.<sup>86</sup>

Fortunately enough, the Prophet, peace be upon him, is alleged not only to have said that his community would never agree upon an error, but also, it was reported after him that the differences of opinion in his community are "a mercy from God"<sup>87</sup>

Doubtlessly, the reformers at such an era did their best to fully utilize this particular mercy and take their pick from varied dicta to apply it in establishing a balance between men and women via divorce accessibility that was exclusively accorded to husbands. The outcome was an improvement in women's status reflected in the promulgation of many laws regulating the right of divorce in a development that underwent three phases:

A) LAWS NO. 25/1920 AND NO. 25/1929 :

These two laws heralded for the genesis of family laws development that started in 1920 and was culminated by the promulgation of the Khul' law in 2000. Both laws laid their grounds on the principle of harm.<sup>88</sup>

According to the law of no. 25/1920 that was amended by the law no. 100/1985, although it was derived from the Maliki doctrine, yet it strongly reflected the Hanafi view with its' formal defects as follows ; The cases rulings relied upon laws which were not collected together in a single body, Thus, it was left to the judge to seek more appropriate view, with absence of many jurists' opinion consensus in most of the cases. Another material

---

<sup>86</sup> Ghandour, P. (139)

<sup>87</sup> Anderson, P. ( 52)

<sup>88</sup> Cornwall, and Edwards, P. (35)

flaw in Abu Hanifa's school was that it did not match with the age development, as other schools existed at that time.

The law allows the wife to ask for divorce according to the following grounds :

- Article (4) divorce for absence of financial maintenance
- Article (5) divorce for desertion.
- Article (9) divorce for a major defect as madness, chronic illness...etc..<sup>89</sup>

The subsequent family law (PSL no. 25/1929) that was amended by the PSL no.100/1985 gives the wife the right for divorce on the following grounds :

- Article (6) Divorce for dichotomy between both spouses (misogyny).(shiqaq) .
- Article (11 repeated) divorce for polygamy (a husband married a second wife without informing the first one.) the first wife has the right to get divorce throughout a year of informing her.
- Article ( 11 repeated, 3) divorce for the second wife if proven that he concealed his first marriage.
- Article ( 11 repeated, 2) divorce for major disputes between the spouses.
- Article (12) divorce for desertion more than one year without a plausible excuse.
- Article ( 14) divorce for husbands' imprisonment more than three years, so she can file a divorce case after one year.
- A wife could ask for a repudiation upon proving the marriage is void or corrupted or revoked due to licit reasons.
- Divorce for apostasy.

Law no.25/1929 was drawn from the four schools of law. According to Mulki Al Sharmani,,although it extended the ground of harm, yet it was also adjudged as being unequal and discriminatory because the husband still enjoys an extensive unfettered right to unilateral divorce and polygamy.<sup>90</sup> In fact, The study agrees with Al Sharmani and would like to

---

<sup>89</sup> Abo Zahra P, (22)

<sup>90</sup> AL Sharmani , from " Feminism Empowerment and Development " book by Andrea Cornwall and Jenny Edwards.

assert that woman's right for divorce continues to be highly restricted as she has to get at least two witnesses to prove any kind of harm inflicted on her the fact that creates a huge impediment as the harm mostly occurs inside the conjugal home and not in public. To add up, it was noticeable from many Khul' court cases analysis that a husband prefers to hide his second marriage from his first wife, especially in high social and economic class, and although the Egyptian family laws prohibits and strictly sanctions whoever breaches the law, yet he always succeeds to do it his own way, As a result, if it happens that a wife accidentally discovers such a matter after a year of his second marriage , she could lose her right to file a case against him .

#### B ) LAW NO. ( 44 ) OF YEAR 1979 :

The two above PSL remained unchanged for around fifty years until President Sadat decreed a new PSL no. (44 )for the year of 1979<sup>91</sup> which included revolutionary reforms the most important of which is giving the wife for the first time an automatic right to judicial divorce in case of polygamy with no need to prove any harm, and the right to the conjugal home if she is divorced and she has the children's custody. It also endows the wife legislated ' mut'a' (indemnity) if she gets divorced against her will.<sup>92</sup> However, Due to a boisterous opposition from the Traditionalist and the Islamist groups who accused the Law of infringing the Divine law by restricting Polygamy that is acknowledged by Shari'a, and also accused Gihan El Sadat and the feminists of espousing the westernized thoughts , The law was annulled by the High Supreme Court in 1985 for its' unconstitutionality as it has been decreed by President Sadat while the Parliament was not in session whereas there had been no emergency situation justifying its being issued in this way, and was amended by another law two months later.<sup>93</sup>

---

<sup>91</sup> It was called ( the Law of Gihan) referring to Mrs Gihan El Sadat, wife of the President, who strongly supported the law.

<sup>92</sup> Alami, P. ( 5)

<sup>93</sup> Voorhoeve, P. ( 80 )

### LAW NO. 100 OF THE YEAR 1985 :

This law has been promulgated at the same year by the People's assembly on basis of a proposal put forward by some of the members to modify the law no 44/1979 and removing the clause that restricts men's right to polygamy.<sup>94</sup> It has been considered a replacement of the annulled Law, yet was deemed by feminists a setback in women's status as it implied some modifications that curtailed women's control over her the divorce process . It considered polygamy a possible source of harm as decided in the law no.25/1929, yet still the encumbrance of demonstrating the harm falls upon her, and since the second marriage has to be registered, the first wife has to file a claim within a year of her notification or else it would tacitly be considered a consent from her part.<sup>95</sup>

### C ) LAW NO. (1) OF THE YEAR 2000 : THE KHUL' LAW :

By the advent of the millennium, particularly on the 26<sup>th</sup> of January 2000, a new procedural personal status law has been promulgated aiming at facilitating and speeding up litigation in the repudiation cases and personal status law cases to solve the problem of the court backlog and its protractedly divorce procedures. According to the law, a wife is entitled an authority to unilaterally divorce her husband on condition that she :

- a) Renounces her outstanding financial rights.
- b) Pays her husband's back the dower (mahr registered in the marriage contract).
- c) Undergoes a reconciliation period for three months if there is no children and six months if they have children.
- d) In case of failure of reconciliation, a wife has to show up in front of the court and explicitly declares that she hates her husband and she is afraid she may transgress God's limits.<sup>96</sup>

---

<sup>94</sup> Alamy, P. ( 28 )

<sup>95</sup> Sonneveld , P. ( 28 )

<sup>96</sup> Al Sharmani , P, ( 13)

Accordingly, and for the first time in modern Egyptian history, the wife irrevocably divorces her husband without any need to prove the harm (darar) or take the consent of neither her spouse nor the judge.<sup>97</sup>

Although the new PSL law comprises seventy-nine clauses (compressed out of 318 clauses in the old procedural law) dealing with various issues pertaining to organizing litigation procedures of Personal status, yet it was soon nicknamed the “Khul” law as it implies Article (20) on khul’ that triggered vociferous controversies among the religious scholars as well as the general public as will be discussed later.

Article ( 20 ) of law no. 1/2000 stipulates that :

“ A married couple may mutually agree to Khul’ ..... However, if they do not agree and the wife sues demanding it, and separates herself from her husband by giving up all her financial legal rights, and restores to him the “sadaq” he gave her, then the court is to divorce her from him. The court shall not rule for divorce through Khul’ except after trying to reach reconciliation between the spouses, and after trying to reach reconciliation between the spouses, and after delegating two arbiters to continue reconciliation endeavors between them, within a period of not exceeding three months and also after the wife explicitly<sup>98</sup> declares that she hates living with her husband, that there is no way for continuing marital life between them, and that she fears to commit a violation of the restrictions that God has places of that hatred. The separation effected by Khul’ is under all circumstances an irrevocable divorce. The courts decision is under all circumstances not subject to appeal, in any of the forms of appeal.”

The above text articulates two different interpretations of Khul’ representing the variation between its’ old traditional practice as a consensual divorce agreement recurrently recognized during the pre-modern era “ A married couple may mutually

---

<sup>97</sup> Welchman, 2007, P. ( 69)

<sup>98</sup> Sonneveld P . (33)

agree to khul’ “, and the brand-new implementation of PSL no. 1/2000 that considers the husband’s consent to the repudiation as being inconsequential “ However if they do not agree and the wife sues demanding it..” Although the four schools of law made big emphasize on the consensual character of the Khul’ transaction<sup>99</sup>, yet in a contradistinction with them, the new recognition to Khul’ law successfully managed to ignore the necessity of the husband’s consent through applying “takhayyur” and “talfiq”; in 1981, article two of the 1971 Egyptian constitution was amended and Shari’a became the main source of legislation rather than a source of legislation,<sup>100</sup> thereunder rendering the Egyptian Legislature more flexibility in interpretation of the Maliki school, being urged by social necessity. Added to that, in 1993 the Supreme Constitutional Court illustrated a clear distinction between the absolute stable principles of Shari’a that is unquestionable, and the relative rules of Shari’a which are liable for “ijtihad”. Since Habiba’s Hadith did not clearly mention the need for Thabit’s consent, and since the Qur’an and the Hadith are absolute rulings of Shari’a, Egyptian Jurisprudence made perfect use of “ijtihad” to substantiate their eccentricity from the four schools of shari’a path.<sup>101</sup>

## GROUP OF THE SEVEN :

“ The process of legal reform is in fact more important than its’ outcome because it is through the process that we can capture (and subvert) the discursive power of the law and its complex interplay with other domains of the gendered lives of women and men”.<sup>102</sup> “Kapur and Cossman”

---

<sup>99</sup> Linant de Bellafonds, 1965, 423 : 1063, by Nadia Sonneveld, 2012

<sup>100</sup> Supreme Constitutional Court Ruling, Case no. 28 of May 4, 1985 available at <http://www.hcourt.gov.eg/Rule/gerRule.asp?ruleId=330&searchWords=trans>. In Arabi., supra note 33, at 6, see also Text of the current Egyptian constitution as well as older constitutions can be found on the Supreme Constitutional Court’s website. Available at <http://www.hccourt.gov.eg/Constitutions/Constitution71.asp>

<sup>101</sup> Sonneveld, P. ( 31 till 38)

<sup>102</sup> Kapur, r. and B. Cossman (1994) Subversive Sites : Feminist Engagement with Law in India, Sage Publications, New Delhi.

There is no better quotation than the aforesaid to illustrate the genesis of the Egyptian Khul' law and the impediments encountered the law founders "Group of the Seven" until it has been passed safely by the government, as the literature of Kapur and Cossman suggests the need to pay close attention to the process through which the legal reforms are introduced, debated and implemented to provide a better Understanding for the outcome of these reforms, and their contradictory impacts on the Egyptian women.<sup>103</sup> Interminably, the current research accepts and builds up many findings on that literature, as this was exactly the strategy adopted by the Group of seven Since the inception of the their activities to introduce a Personal Status Reform in Egypt as early as 1995. The strategy was two pronged as it cautiously walked along two parallel approaches to avoid provocation of the prevailing religious, male hierarchal and ideological movements within the middle class and reach the public masses; namely the piecemeal approach and the religious approach.

#### The Piecemeal Approach:

The group of the seven is an eclectic coalition of women activists and lawyers, supported by few official religious establishments, governmental officers, and few sympathetic members of the judiciary, who worked together with an over -zealous fervor to introduce a significant development in the Egyptian family laws. According to Mona Zulficar, a prominent lawyer and an active member of the group, the campaign was initially founded for the introduction of a new marriage contract , yet after the enterprise lacked support and was rejected by the Islamists and on the top of them the Azhar Sheikh Jad al haqq,<sup>104</sup> , it gradually transformed into a campaign for a new procedural personal status law (PSL coalition) in 1995.<sup>105</sup> They decided to shelve the former campaign and start with the latter as a small

---

<sup>103</sup> Al Sharmani, P. ( 32 )

<sup>104</sup> Azhar Sheikh Jad Al Haqq vehemently opposed the new marriage contract draft in 1995 by accusing it of " Legitimizing the forbidden and forbids the legitimate" , and based on non-religious grounds, and also believed that it would discourage the youth from marrying due to the inclusion of stipulations inside the contract.

<sup>105</sup> Zulficar, 2008, P. 240 )

beginning, and throughout the five years till the law was promulgated, the Group of seven tried hard to form a solidified foundation to build the law upon through gaining governmental support of the ruling authority. Respectively, this led to gaining the approval of the religious authority personified in Shekih El Azhar (Mohammed Tantawi) who, surprisingly and despite his repeatedly anti-women stances during the Azhar Academy sessions, approved the Khul' draft that was presented to the Academy of the Islamic Research of AL Azhar in the session of 11 February/ 1999, and furthermore, he extensively defended the draft law before the People's assembly as well as in the public debate. Seemingly, he believed in presenting the government's point of view even if it opposes his own personal view or that of the Azhar.<sup>106</sup> On the other hand, the government started curtailing the opposing powers through many policies, as for the secular activists i.e. they closed the Liberal Arab Women's Solidarity Association of Nawal El Saa'dawy and handed over its license and assets to an Islamist moderate women's organization. Besides, the government held a strong grip on the Azhar, the fact that irritated the Islamists and aggravated many of them to accuse Sheikh Tantawi of behaving like a civil employee (mu wazaf)<sup>107</sup> and not as a head of a most prominent Islamic Institution world-wide. In addition, the government established the National Council for women (NCW) in March 2000, two months after Khul' law promulgation, with Suzanne Mubarak as its President.<sup>108</sup> Doubtlessly, all these achievements came as a result of the stupendous efforts exerted by many feminist activists like the Group of the seven and others who confidently function according to set-up, long-termed plans based upon a thoroughly deep perception of the surrounding environments with its complexities and intricate societal and theological challenges. Intrinsically, such efforts would pave the road for more advancements and developments of personal status laws and what evidences to that is the complementary amendments of the law no.1/2000 that took place in October 2004 for establishing the new family court system.

---

<sup>106</sup> Moors, ( 2003); Schulz ( 2003) , Welchman , (2003 )

<sup>107</sup> " Al Sha'ab " newspaper, P. (2), 21/January/ 2000

<sup>108</sup> Singerman, P. ( 173 till 175 ), 2005



## THE FAMILY COURT LAW NO. (11)/ 2004 :

The new procedural reforms have created a momentum for other changes to occur and commenced a journey towards a bundle of amendments aspiring to a new family code that is more substantive and comprehensive as follows:

- a) Starting from 17/March/2004, the family courts was established to unify and centralize all courts in charge of personal status affairs and all issues pertaining to family law disputes together to put an end for the scattering of law claims and litigations that could be related to the same case among different courts. The theoretical aim of such an amendment was to remove the hardship encountered by the wife and her children moving from one court to another to follow up with these claims. Categorically, the wife benefited a lot from this procedure as she used to suffer from the long details of dispute resolution beside the supplementary fees that was burdening her especially if she was poor.<sup>109</sup> Yet, the effective implementation of these family courts was impaired by a number of shortcomings which in effect impeded women's access to justice as will be dealt with in details in ( Chapter Four in the section of the "Demerits of the Khul' law implementation" ).
- b) In the same year, PSL no. (11) was issued setting up a government fund through which the female disputants are paid court-ordered alimony through Bank Nasser.
- c) In year 2005, PSL was issued extending the divorced mothers' rights to child custody until their children (boys and girls) reach the age of 15 years.<sup>110</sup>

## THE RELIGIOUS APPROACH:

“ We could not afford to shy away from the challenge and continue using strategy based solely on Constitutional and human rights. We had to prove that the standard religious discourse could also be used by women to defend their cause .....They (the religious extremist people ) accuse any secular feminist opposition of being

---

<sup>109</sup> Maugiron, N. P. (18 )

<sup>110</sup> Cornwall, P. (33)

anti-Islamic, an agent of either the “ non-religious” Eastern block or “the corrupt” Western block. It was therefore essential for the women’s movement to diversify its approach and adopt a credible strategy that could reach out and win the support of simple, ordinary religious men and women.”<sup>111</sup>

“ZULFICAR “

Due to a long history of frequent resistance against any attempt to improve women’s status beginning from the annulment of the Law 44/1979, to the constant accusations from the extremists of dissemination of westernized ideas and practices that could infringe the Shari’a, and summing up by the failure to pass the Law of New Marriage contract which was refused by the Sheikh of Azhar Jad El Haq, the feminist activists got the message that to succeed in issuing the PSL of reform, they need to adopt a certain strategy by speaking the same language of Islam to challenge the Islamic fundamentalists on religious grounds and refrain from mentioning the ideas of gender equality or human rights in order to eschew any direct confrontation with the extremist movements who used to utilize religion in creating a public sphere in which the Shari’a is exploited to persuade opponents and gain legitimacy and acknowledgement of the masses<sup>112</sup>.

Moreover, the feminists also resorted to various smart alternatives as conducting many moderate Azhari scholars, men and women alike, as well as other religious establishments and provide them with a good acquaintance of their intentions and explain that they are not against the Shari’a by any means , and they also have nothing to do with the secularists, but rather in accordance with the precepts of equality and justice ordained by the Shari’a<sup>113</sup>

### CONTROVERSIES AGAINST THE KHUL’ LAW:

In spite of all the above tactics, and although the the Khul’ law had been issued under the supervision and the leadership of prominent lawyers and religious jurists and was acknowledged and supported by Al Azhar , yet, it inaugurated an

---

<sup>111</sup> Zulficar, 2008, P. (242)

<sup>112</sup> Singerman, P. ( 116), 2005

<sup>113</sup> Zakaria, Hoda, P, (54) , found in ( The Harvest), by Dr. Ahmed El Sawy

outrageously controversy among many sectors of the society, the Islamists on one hand presented in different political parties like the Muslim Brotherhood, “El Sha’ab” party, the Salafis, and the extremist radicalists , as well as the liberatist activists on the other hand , each side has his claims and accusations as will be scrutinized throughout the study :

### 1) CONSTITUTIONALITY OF THE KHUL’ LAW :

The literature of “Annelies Moors” in his interesting book “Women, Property and Islam” (1995), maintains that since the 1990s onwards, the “Family Law Reform has been hotly contested throughout the Muslim world from the political groups with each group pursuing his own political agenda”<sup>114</sup>. The same idea has been supported by many theologians like Leon Buskens, (1999), Dorothea Schultz (2003), and Lynn Welchman in his book “Women, and Muslim Family Laws in Arab States” (2007) stating that “Scholarly literature on personal status law in the Arab world has come to consider family law reform as an almost primarily political issue”.<sup>115</sup>

Linking the above quotations with the political life turmoil in Egypt , the study could spot light on the accusations of many Islamist members of the Egyptian Parliament of the ruling party at those days ( Al Hizb Al Watany ) who aggressively opposed the Khul’ law on religious grounds as if they were the sole guardians of Islam who have the right to interpret its’ principles in an authoritative manner, bearing in their minds the upcoming parliamentary elections to show themselves as defenders of the religion precepts. The Khul’ law was subject to more than 60 litigations during the first six months from its enactment contesting the constitutionality of the law before the Supreme Constitutional Court, as the plaintiffs alleged that the Article (20) of the law no. (1) of the year 2000 deprives the husband from any appeal to the verdict that has been issued by the family court

---

<sup>114</sup> Moors , P. ( 115)

<sup>115</sup> Welchman, P, ( 39 )

and thus violating article ( 2 ) of the Egyptian Constitution that stipulates that the Shari'a is the main source of legislation.<sup>116</sup>

Since the inception of the Supreme Constitutional Court in 1979, it has often played a pivotal and a decisive role in the most spiky and controversial issues as it has the power to pass a law or to annul it (as the annulment of law of 44/1979 ). Moreover, It has been stated by Lama Abou Odeh that the significant majority of the Supreme Constitutional Court cases of controversy under Article ( 2 ) are of personal status law and this defines how often opponents of any personal status law invoke the word Sharia'a as a pretext in hopes to curb reform.<sup>117</sup>

In the rulings of 15/ December / 2002, The Supreme Constitutional Council declared that the new personal status law is constitutional on the grounds that it did not violate the Shari'a because both the Qur'an and the Sunna of the Prophet, peace be upon him, supported it as the khul was clearly mentioned in the prophetic tradition and the Qur'anic verse. The verdict also stipulated that the legislators have the right to promulgate a law whose rulings are not open to appeal as far as there is an acceptable justification for it.<sup>118</sup>

It is noticeable in this ruling that the SCC made use of the version of "Al Bukhari" in the Habiba Hadith where the Prophet, peace be upon him, divorced Habiba against the will of her husband Thabit.<sup>119</sup> The SCC here employed ijihad in providing the best interpretation to the Hadith to extract the legitimacy needed for the Khul' law in favor of the Egyptian women. Doubtlessly, the SCC edict was considered a victory for the Khul'law.

---

<sup>116</sup> Mona Zulficar Biogtaphy, "The new marriage contract in Egypt: Religious reframing and Hazards of the reform", by Hind Zaki.

<sup>117</sup> Abu Odeh, L. "Modernizing Muslim Family Law:the case of Egypt", the case of Egypt", Oxford University Comparative Law Forum 3, <http://ouclf.iuscomp.org/articles/abu.Oudeh.shtml>(accessed 18 December 2009)

<sup>118</sup> Supreme Constitutional Court Ruling. Case no. 201 of December 15<sup>th</sup>, 2002. Available at <http://www.hccourt.gov.eg/Rules/getRules.asp?ruleId=124&searchWords=>

<sup>119</sup> Al Jarida Al Rasmiya 52, 26 December, 2002, 50-59)

Nevertheless, things grew even more worse in the Post-Revolution of 25 January witnessing the rise of the Islamist who took over the authority by the winning of President Mohamed Morsy and the Brotherhood Party (Al Horeya wal 'Adala) and entering the Parliament after a precarious period of conflicts of many powers to control the Country. In 2012, a new accusation faced the Khul' Law came from an independant parliament member of Aswan called Mohamemed Al 'Omda , a secretery of the Legislative Committee of the House of Parliament, who filed a case against the Khul' law of being "unconstitutional" as it infringes the Islamic Shari'a , and he proposed the annulment of the Article (20) of the law 1/2000 as , according to Al Omda, was specially tailored for favoring Suzanne Mubarak, her friends of the cream of the society, and the Woman's National Council, aiming at women's empowerment and contradicting with the Qur'an, the Sunna, and the four schools of law in Islam. Again the claim was refused by "Majma' al Bohous al Islameyia" in the Azhar as they proclaimed the law walks in conformity with the Qur'an and The Sunna, and the Women's National Council answered to The MP's accusation that there is no relation them and the khul' law as it has been promulgated two months before the founding of the council in March 2000.

Besides, Many other moderate Azhari Scholars like Dr. Amna Nosseir and Dr Malaka Zarar vehemently refuted the MP's claim and they accused him of showing off to appease ' El Nour " party and the Islamists to gain their support in the coming Presidential Elections as he was seen afterwards collecting signatures from his MP colleagues for his nomination,<sup>120</sup> the fact that reflects the scandalous dichotomies prevailed on the scenery in the Post-Revolution time due to the huge changes in both the political and social life in Egypt.

## 2 ) The opponents accused the Khul' law to be a tantamount to a heresy

A raucously opposition aroused within the Islamist and the political parties in Egypt as soon as the khul' law was promulgated not only attacking the government and women's rights organization but also against the religious establishments and

---

<sup>120</sup> The Women National Council official website, 20/ March /2012.

the ‘Ulama’, i.e. the labor party utilized it’s newspaper “Al Sha’ab” to fiercely attack the law through the following headlines “ The project of the personal status law is a step towards complete secularization of the state”<sup>121</sup> , “ The colonization strips Egyptians of Anything that Refers to Shari’a”<sup>122</sup>. Then the opposition has soon been amounted to an attack for the Azhar as an institution personified in Sheikh Tantawi as the ‘Ulama’ publically accused his person of being an unbeliever (kafir). Many disparities occurred within the Azhar itself and the opposition parties called for his resignation. In August 2002, Yahya Ismail, the former secretary general of the dissolved front of Al-Azhar Ulama’ was given a one-year prison sentence for having insulted the Sheikh Tantawi in an article in Al Sha’ab newspaper entitled “ Khul’: Made in America” bitterly criticizing Tantawi’s support to the Khul’ law.<sup>123</sup>

However, in light of the above evidences stemming up from the Qur’an and the Sunna, the study claims that the opponent’s accusations are pointless as it would be sensible to maintain that the Khul’ is authentically Islamic as described and recommended by the Qur’an, and proven its’ existence by the time of the Prophet Muhammed, peace be upon him, and his acknowledgement that was based upon the principle of equality which many Qur’anic verses advocated to, leaving no doubt that male and female believers are equally treated, equally charged and they will reap equal rewards., so it is not something foreign or alien to Islam as the Khul’ opponent claimed. In the same vein, “Shaham” suggests here that sometimes the actual reasons for the religious authorities opposition to any alteration in the personal status law, which they always consider their main bastion of control, lies behind political reasons and not religious ones . “Shaham” gave a similar example that of the refusal of Sheikh Jad El Haq to the new marriage contract law although, according to “Shaham”, its content to a great extent resembles that of law no. 100/of

---

<sup>121</sup> “ Al Sha’ab” newspaper, 31 December, 1999, it had been noticed here that the date of issuing this article was just few days before the official declaring of the Khul’ as a law , seemingly that the opposition was readily prepared even during the period of the law negotiations that they did not even wait to see the results .

<sup>122</sup> “ Al Shaab” newspaper, same issue as above.

<sup>123</sup> Sonnenveld, P. ( 44)

1985 in, a fear from the religious authority that it could develop by time into a civil marriage contract .<sup>124</sup>

To elucidate more, the study offers a quick and brief glimpse, yet not detailed due to time and space limitations on one hand , and the theoretical framework boundaries that has been set for such a study in order not to be off-focus of our research core on the other hand, through the Egyptian and the Islamic history for better verification of the ingenuity of women's free-will concept and that Khul' has been practiced in Egypt since old ages even before the introduction of Islam in the country. Extremely interesting findings would be expounded as follows :

- Khul' in Ancient Egypt :

According to Amira Al Azhary Sonbol, Samia Menissy, and Jamal Al Kurdy, khul' was always there and the idea of women's "free will" in Egypt is as old as the Pharaohs; the Egyptian women experienced full discretion in controlling her personal affairs since the Pharaonic Period where she could marry and divorce at will, inherit and deed property at will, she could set up endowments or leave her property to whoever she wishes and even she could stipulate whatever conditions she sees for securing herself in her marriage contract and one of these conditions could give her the right to divorce herself if she desires without even resorting to court (khul') as she was in a par with man. It has been evidenced that the Pharaonic women enjoyed the right of divorcing herself with no need to state the reasons in the periods of "Dawla Al Qadima" and "Al Dawla Al Haditha" and in return she has to return back her dowry which she might exceed if there is no fault from her husband's part. However, it was recorded that during the period of the modern Pharaonic state, the wife was required to state the reasons of repudiation before divorcing herself as mal-treatment or betrayal or negligence from the husbands side...etc...<sup>125</sup>

---

<sup>124</sup> "Al Wafd" newspaper, 11, February, 1995

<sup>125</sup> Sonbol, 1996, P. ( 42 ), after Afaf Lutfi A-Sayyid Marsot. See also Samia Menissy, P. ( 17), and Kordy, P. ( 131)

- Khul' in Pre-Islamic Period :

Probing more into history, it was registered that Khul' law has been practiced in Pre-Islamic period ( jahiliyya ) with slight differences than nowadays; if the wife has a “ waley “ or a guardian, he was entitled to annul the marriage and return the dower back as he was the one who collected it upon marriage, regardless of the husband's consent, whereas if there is no “waley” and the mahr was donated to the wife herself then she has to return it back to her spouse and also without his consent. So the difference between the Pre- Islamic khul' and the post Islamic one ( the khul' prevailed at the prophet's time and not our new version of nowadays khul' ) is the husband's consent .<sup>126</sup> A man called “ 'Amer Ibn El zarb” divorced his daughter from her husband “Amer Ibn El'hareth” who was also her cousin because she felt an aversion towards him , so he went to her father and complained about that, the father said “ It would be unfair to lose both your wife and your money so divorce her and take back your dower”<sup>127</sup> .

Also it was registered in the Pre-Islamic period that women in who were attributed to the refined tribes (elite) used to have the right of accepting or refusing marriage proposals, and also those women who were talented used to share the social activities same as men, and many of them were very eloquent poets and rhetorics presented their works in the famous assemblies like “Souk 'Akkaz “ to preach people wisely. Among them was the famous Poet “ Al Khansa'a” who refused to marry “Dorayd ibn AL Samma” when he proposed to her. Within the same context, another amazing information has to be recorded that the mother of “Abuhl Mutalib” ( the Prophet's Grandfather) had the right of the marriage knob in her hand ( “isma) . Also, Notable to say that even within one elite tribe, women used to vary in their standards according their lineage. i.e. “Khadiga Bint Khuwailid” who was a very famous, rich and renowned woman in her kinship, as written in many of the history books, found no blushing to send

---

<sup>126</sup> El Kordy, P, ( 132 )

<sup>127</sup> El Agouz, P. (21 ), see also El Kholy P. ( 37 )



a messenger from her part proposing the prophet Muhammed, peace be upon him, for marriage by her own will .<sup>128</sup>

- Khul' in Islam :

It came in “Sahih Al Bukhari” , famous book of Hadith, that a woman called “AL Khansaa’ Bint Khaddam Al Ansareyya” was obliged by her father to remarry for a second time and that was against her will, then she went to the Prophet, peace be upon him, complaining and expressing her dislike to enter in another marriage relation-ship , so the Prophet revoked her marriage and declared it null as far as it has been decided without her consent.<sup>129</sup>

It has been reported in “ Tafsir Ibn Kathir” that a Bedouin woman came to the Muslim’ Khalif “Omar Ibn Al Khattab” expressing her abhorrence towards her husband and avowed her desire to divorce him. Khalif Omar wanted to examine how far was her repugnance towards her husband and her seriousness in the repudiation decision before he annuls the marriage bond, so he left her over-night in an extremely awful place , and when the morning came, Khalif Omar asked her about her night, so she answered that it was the best night for her since she married her husband. Here, the Khalif asked the husband to divorce her and accept her ransom even if it is her earrings.<sup>130</sup>

Another Khul’ case occurred during the reign of the fourth Caliph “Ali Ibn Abi Taleb in which he perfectly acted with a great understanding for the spirit of the Qur’anic verses in abidance to the aims and essence of the gender equality rules, as a man and a woman came to him complaining of failure to get along with each other due to big disparities in the behavior of each of them. Soon Khalif “Ali” acted as a judge and asked for representatives from both sides and he commissioned them to analyze the case carefully and with impartiality as it is a sacred mission, and asked them to try to patch up things

---

<sup>128</sup> Menissy, P. (35)

<sup>129</sup> Fath Al Bari Bi Sharh Sahih Al Bukhari, P. 160, 161, Also see al “khul’ “, Mutawa’ , P. 89

<sup>130</sup> Tafsir “Ibn Kathir”, Vol. (1 ), P. 285, see also Al Kholy, P, ( 101 )

if they realize a good chance to. When the arbiters reached a decision, “Ali” made the divorce legally effective by forcing the spouses to abide by it.<sup>131</sup>

The last thing to be added in this juncture is that many Khul’ cases had been reported during the age of “Al Murabetin” in Andalusia (from 484 till 541 hijri/1091-1147) in the magnificent book of “ Bidayat Al Mujtahid Wa Nihayat Al Muqtasif” for Ibn Rushd (the grand-father) which was considered a mirror that reflected his age. He has been quoted saying “Ransoming was acknowledged by Shari’a to provide the necessary balance in divorce rights and authorities, so as far as the “Talaq” has been accorded to a husband who detests his wife, the “Khul’” has been accorded to woman who detests her husband.”<sup>132</sup>. In addition to the book of “ Fatawa Ibn Rushd” (the grand-son) 595hijri/1198 which also presented different cases of khul’ in his age.<sup>133</sup>

- Khul’ during the Mamluk’s time :

“The absolute right of husbands to disband the marriage contract at will, like the absolute right of a master to manumit his slave, were symbols of Patriarchal authority, eclipsing other male priviledges, such as polygamy, concubinage and the right of physical chastisement”

- By these words, Yossef Rapoport produced a wealthy literature for khul law during the Mamulk’s age through scrutinizing many khul’ cases took place at that time. According to Rapoport, the majority of divorces in the Mamluk society were neither unilateral repudiations nor judicial dissolutions, but Consensual separations (khul’) in which a wife is ransoming herself in return of divorce. He maintained that the legal wording of the consensual divorce deed makes it apparent that the wife

---

<sup>131</sup> Jawad, Haifaa A., P. ( 75 )

<sup>132</sup> Al Imam Ibn Rushd, P. ( 197 )

<sup>133</sup> Nariman Ahmed, P. ( 32 )

who offers a monetary compensation always initiated these settlements. Yet, as he claims, the formalities of divorce deeds concealed a complex interplay of various legal and extralegal pressures reflecting the husband's stupendous leverage power in the negotiations for repudiation. Such settlements were so common as to be considered a standard format for the divorce at that time that notaries assumed any couples coming to record a divorce had already agreed on a consensual separation. However, many husbands during that age had proven to be coercing their wives to ask for khul to get away from paying any maintenance and to retain back the dowry, and in many cases, husbands showed special interest in maneuvering to extract favorable divorce settlements .i.e. playing the custody card . Henceforth jurists sometimes expressed special concern as to whether the wife who entered divorce settlements were acting voluntarily.<sup>134</sup> Rapoport recorded a case from the court of Taqi –al-din- al Sobki in Damascus where a wife was able to provide evidences in front of the judge that she had been forcibly coerced by her husband into a divorce settlement .<sup>135</sup> Accordingly, Mamluk jurists made many amendments to the Sunni law of marriage and divorce, mostly in order to secure from their husband's abuse like enabling the wife to remain in their hometowns against the husband's will, and secured them with compensations in case of a unilateral repudiation, and censured the excessive beatings.

Nevertheless, judges rarely granted a judicial divorce against the husband's will and that is why the divorce negotiations were superficial and the court's role was mainly confined to putting an official stamp on such settlements.<sup>136</sup>

In spite of the forceful patriarchal powers exercised on the Mamulk women, yet, she was allowed to stipulate clauses in her marriage contract to safeguard herself against the misogyny prevailed at that era and many

---

<sup>134</sup> Ibn Taymiyya, Majmai Fatawa, vol. XXXII, 355-358-61

<sup>135</sup> Al Sobki, Fatawa, vol.II, P. ( 297 )

<sup>136</sup> Rapoport, P. ( 71-75 )

manuscripts of marriage contracts enacted during the eighth and the ninth century illustrates that.

Besides, wives had the right to appeal to the Hanafi or the Maliki Qadi for judicial divorce only on the grounds of abandonment for at least six months. It is worthily saying in this particular case that Mamulk husbands used to adapt a very uncommon and widely-used tradition by depositing a conditional bill of divorce with their wives before going on a journey making the divorce of the wife contingent on his absence for a certain period of time and if the husband 's abandonment extends, then the wife is accorded the right to confirm the divorce in court.<sup>137</sup>

#### KHUL' IN THE OTTOMANS ERA:

Moving forward through the time span to the Ottoman era, it has been luckily recognized that the Egyptian archive dating from the Ottoman period is a blessing for any researcher as they are replete with marriage and divorce contracts since registration was mandated. Wives could ask for Khul' and judges normally granted it to them as the judicial life at that time used to experience a fairly satisfactory amount of flexibility due to applying the four schools of law, albeit the Hanafi school was the official school of the Ottomans. One thing that is obvious from the court records that the court procedures and legal decisions did not differentiate between men and women (both parties had to appear in person in court to present evidence and witness of corroboration in case of divorce for harm and it was quite common for women to receive a favorable judgment.<sup>138</sup> As for the Khul' claims, a huge number of cases had been recorded and what was so interesting is that the Shari'a court did not serve Muslims alone but they also serve non Muslims who came to court to register lands, document inheritance, and even marry and divorce against the church's orders. Ottoman archives illustrate divorce cases of Christian and Jews husbands and wives<sup>139</sup>. The study is presenting a sixteenth

---

<sup>137</sup> Ibn Taymiyya, Majma' Al Fatawa, vol. XXXIII, P. ( 120 )

<sup>138</sup> Dishna, Sigilat, 1273, 1:15-92, see also Sonbol, "Muslim women, Marriage and Obedience", 2005

<sup>139</sup> Sonbol, Women of the Jordan : Life, Labor and Law", P, 62, 63

century court case for a Khul' claim presented by a Christian wife "Maryam" who wants to ransom herself and get divorce from her husband "Ibriyan"

" In Majlis Al Shari'a.....in front of Mawlana (his Honor), the Christian women named Maryam Bint Abdel Ahhad Al Siryani, vouched for by her father, asked her husband "Ibriyan Wild Habiyan" the copt who is present with her in court, to divorce her (an yakhla'ha) from his ('Isma) and marriage knot ('Uqdat Nikahi) in return for her relinquishing her mu'akhhar sadaq(Delayed dowry) amounting to ten qurush and from her nafakat-al-I'dda(alimony for period of 'idda) and housing expenses(during the 'idda) and from fifteen qurush leftover from her previous nafaqa according to this earlier document.... He accepted and Khala'ha(Divorced her) so she is divorced from him and cannot go back to him except with a new marriage contract and a new dowry.<sup>140</sup>

The document ended with the signatures of the judges and the members of the Majlis (council) all of whom were Muslim Sheikhs. The wordings of these divorce documents show that Muslims and non- Muslims lived very similar and simple lives. In addition, the tremendous amount of Khul' documents reflects women's strong position in the family and society.

Similarly, Magdi Guirguis pointed out in his Article about " Divorce and khul' in Cristianity " that the application of the khul law in Egypt solved a crucial crisis of separation among Christians nowadays as although, according to him, many Christians used to deal with the Islamic legislative courts since the Ottoman age in both marriage and divorce in order to get benefit of the Islamic stipulated marriage contract, and to get divorce by khul',<sup>141</sup> and he documented that by tables, yet till now the Catholic Church is still sticking to its' old interpretations for the Bible texts, that prohibits Divorce, and is dealing with the disputed couples as if they are infallible angels who should never protest which is extremely unrealistic.

---

<sup>140</sup> AL Quds shari'a court, 1054(1604, 27-134-324-1) vol 1, P246, also see Sonbol "Women of the Jordan Life" P. 63

<sup>141</sup> Afifi, Mohammed, " Christians in the Ottoman Period" , Cairo, Gerenal Organisation of Books 1992, Series of " The History of the Egyptians " 54, P. 226, 227, 233.

Meanwhile, the Government, on the other hand, is not also providing any alternative legislations for the Christian citizens as whenever they resort to the civil courts and succeed to win a divorce case, they are stuck by the Church which never acknowledges the civil verdict . (Also see the appendix at the back of the study from table ( 1 ) to table ( 17 ) registering the khul' and divorce cases in Ottoman Egypt through the duration between 1528 / 933hijri till 1669 / 1080hijri) .<sup>142</sup>

### 3) Khul' law is accused of dismantling the Egyptian family by facilitating divorce due to speeding up it's procedures:

Frankly speaking, it is true that the percentages of divorce had massively increased during the last few years, but the khul' law was just a way for the women to get out of an unsuccessful marriage that ended up by a failure due to many other reasons to be extensively discussed through chapter Four. Hence, it would be so awkward that the opponents are neglecting the causes of the crisis itself and focusing on the law established to get out of it . These accusations were largely intensified in the Post-Revolution Period during the reign of President "Morsi" as the "Financial Times" declared that the speech of the Islamists implies a well-defined plan for changing the Egyptian Family Law that they called "Suzanne Mubarak's Laws" and abolishing all the benefits accorded to the Egyptian woman in Mubarak's time aiming at marginalizing her role in the society, the fact that would be considered a dreadful setback. The Islamists also were trying to gain political foundation through playing on people's religious emotions and patriotism by associating the khul' law with the collapsed regime which, according to them, was appeasing the secular westernized society and despising the Shari'a, and to fulfill that they invented many revolutionary slogans and concepts as "Feloul". In fact, their claims seems to be extremely sarcastic as many other laws dealing with various vital aspects of life as economy and politics were also promulgated throughout the reign of "Mubarak" with no mention from the Islamist's part for

---

<sup>142</sup> By Magdi Guirguis, an article that has been issued in the Rosnama. Al Hawleya Al Masreya for documents, issue no. 5,7007 from page 141 till page 156 , "Marriage and Divorce of Christians in front of the legal Courts in the Ottoman Empire".

their amendments whatsoever. The National Council of Women impugned these accusations by maintaining that :

-Khul' has already been canonized in many other Islamic countries like Jordan, Libya, Morocco, Tunisia, Malaysia, Syria, Bahrain, Iran, Pakistan, and even in Saudi Arabia, should it dismantles the Islamic Family, it would not have been introduced in all these Islamic regions.

-Khul' law's annulment is not considered the best way ever to protect the Egyptian family from being dismantled as the majority of the khul' cases were initially litigations of "divorce for Harm" , and this evidences that it is not the khul' which enticed women to sue their husbands, and also that the women does not resort to ransoming herself and losing all her financial rights unless she expires all other alternatives to attain a judicial divorce that could last for many years in courts.<sup>143</sup>

Paradoxically, it has been historically evidenced that the development or the new codifications of PSL are not always successful in speeding up the legal procedures. To illustrate more, the study claims that one of the main reasons behind the increase in divorce rates is that the marriage contract itself has been changed through law codifications. The marriage contract was severely curtailed with the establishment of the modern Personal status codes that made the inclusion of prenuptial stipulations to the marriage contracts unrecognizable in court and, accordingly, women control over her marriage safety and her accessibility to divorce whenever she desires is abolished. The court usual findings to the conditional clauses added to the contract was that " The contract is correct but the conditions invalid" ( Al 'aqd sahih wal shart batel).<sup>144</sup> By denying women the right to include conditions, she could no longer control her husband's ability to take a second wife, define where she should live, stop him from travelling for long periods of time, insure that he would tread her honorably...etc.... Although the PSL of 1925 introduced, as a substitute, the Qur'anic concept "'Isma" (controlling the marriage tie), yet it did not work out effectively except in s very limited scale due to the

---

<sup>143</sup> The official website of "The women's National Council", Article's name "Al Khul' fi Al Islam ", Thursday, 9/ August/ 2012

<sup>144</sup> Sonbol, "Muslim Woman, Marriage and Obedience", P, (30 )

gender discourses from the traditionalists who belittled a husband who delegates to his wife the ('Isma).<sup>145</sup>

A perfect illustration for the old marriage contracts were those applied during the Ottoman Era as since the beginning of the Ottoman conquer to Egypt in 1517, the Muslim Egyptian family was ruled according to the Shari'aa derived from the Qur'an and the Sunna, which was being interpreted in accordance to the four schools of law although the Hanafi madhab was the official school adopted by the Ottomans. It was up to the individual to choose the Qadi of the particular madhab , and the courthouses, usually with Qadis and muftis of most of the residents of the area adopt. Ordinarily, the Qadi applied the law from his own particular school as well as the “ 'urf ” (traditions) accepted to people of the district and this was the reason of the fairly amount of flexibility and maneuverability in courts at those days as the judge was selectively picking up the law to apply. Such a flexibility that prevailed through the Ottoman time has been reflected in the numerous marriage contracts left behind to draw a contrast between the old Ottoman tractability and the modern developments in the PSL nowadays with the categorization of women' grounds of divorce and the abolition of the inclusion for any stipulations in the marriage contract. These stipulations, in fact, were used to form the strong foundation for a marriage to continue, and its' abolition left marriages on stake. The old marriage contract used to have a blank space where the bride writes whatever clues she wishes to secure herself if compared to that marriage contract of the contemporary modern time which is considered a fill-in-the -blanks paper with no conditions guaranteeing the wife whatsoever. To highlight the differences, two documents for marriage contract are being presented in the appendix by the end of the study, the date of one of them goes back to the sixteenth century implying a wife's prenuptial stipulations (figure 1 ), and the other is an ordinary modern marriage contract issued on the year of 2000 ( figure 2 ) .

In addition, it has been noticed from the court cases content analysis that nine out of the ten cases stayed with their husbands for a long duration of time that their marital life ranged in an average of 10 to 18 years, four of the cases were married

---

<sup>145</sup> Sonbol, “History of the Marriage Contracts in Egypt”, P. (32)



two or three years before the khul' law promulgation , five were married during the period in between 2002 and 2006 ( with a total of nine cases got married before the revolution), and only one was married post –revolution in 2012 (Asmaa' figure 24) and this was the sole case that stayed with her husband for only four years. Should the khul's accusation of facilitating the divorce for women be true, all these wives would have opted to it since its' inception in 2000, so why should they wait for more than 10 years of suffering? Again the cases analysis proves that these wives did not want to dismantle their families especially that some of them have one child( Asmaa' figure 24), and other have three children(Sabah figure 3, and Gihaan figure 13, ). It seems that they preferred for a certain time, each according to his ability to endure, to continue in their marital lives hoping for a reconciliation although some of them stated that they was subjected to physical chastisement (Ne'mat figure 19) and others were subjected to humiliation and abhorrence due to the husband's bad manners ( Hoda figure 4) who asserted that she tried several times to reform and convince him to fulfil his financial obligations, yet all her attempts with him went in vein. So it is quite obvious from the cases that all of them did not ask for khul' unless it was the last option for their emancipation from a miserable marital life and this refutes the above accusation for women of being emotional and irrational in misusing the khul' law as a quick way to ruin their marital houses.

#### 4) Islamists accused the khul' law of being an outright break with the legal tradition of husband's supremacy:

“Mernissi would suggest that a portrayal of women in the public debate was in fact a defense mechanism against profound changes in gender roles and sexual identity, a psychological need to maintain a minimal sense of identity in a confusing and ever-shifting reality”<sup>146</sup>

---

<sup>146</sup> Mernissi, “Beyond the Veil”, P. ( XXVI ), 1987, also see Sonneveld, p.( 3 )

Mernissi's wordings sheds a direct light on a significantly critical dilemma within the Egyptian society and, at the same time, is a major cause for the gigantic outnumbering of the khul' cases. According to the Article ( 1 ) of PSL 25/1920 in Egypt, husbands are bestowed the responsibility of heading the family and were assigned the legal duty of financial sustenance of their wives and children, and in return, wives have a legal duty to be obedient to their husbands. Ideal roles for men and for women are still determined by this notion and was through a long time span yielding husbands supremacy in their marriages, however, within the shocking lived realities of the Egyptian families nowadays with all its perplexities and contradictions emanated from the gender-role juxtaposing, the idea of a husband's supremacy needs to be questioned. The reversal of gender roles in marriages was the inevitable outcome of the paramount and structural changes within the Egyptian society due to the economic crisis that has even exacerbated after the revolution, and the consequent high unemployment rates among men, associated by women's involvement in the framework. As a result, a man failed to bear financial responsibilities of his marital life and women became an essential contributor in supporting her family financially and at the same time is expected to manage her household, serve her husband, and look after her kids, although, and unlike her husband, she does not enjoy any legal right in return of her financial, social and marital burdens. Definitely, the consequences of the husband's failure in providing his family with its' economic needs challenged his authority ( Qiwama ) and he felt emasculated, meanwhile, the colossal stresses on the majority of the Egyptian women evoked a rift in many of the Egyptian families reflected in the mammoth escalation of the khul 'rates.<sup>147</sup>

It has been remarked from the court cases content analysis that many Egyptian husbands misunderstand the notion of their "Supremacy" as has been explained by God Almighty in the holy Qur'anic verse : " Men are Superior than women for being their protectors and maintainers because Allah has made one excel the other, and because they spend to support them from their means."<sup>148</sup> However, the wives who stated the reasons of their desire for khul' maintained that their husbands used to subjugate them, beat them aggressively and refused to spend neither on them nor

---

<sup>147</sup> Cornwall, P. ( 43- 46 ), also see, Vorhooeve, P. ( 81-82 )

<sup>148</sup> Qur'anic Verse ( 34: 4 ) Surat Al Nisa'a

on their children as in case of (Hoda figure 4, and Ne'mat figure 19, Amal figure 14, Hend figure 18) . Notable to say that the study did not mention the names of the remaining six cases in this particular point not because they were not exposed to such physical harassments but because they did not state their causes for khul' .

##### 5) The khul' law was accused of favoring the rich women only :

It has to be admitted that the practice of khul' in Egypt proved to be more nuanced as the criticism in the public discourse, in many cases, reflects the contradictions of the women's life realities. Many opponents, among them was the member of Parliament Yassin Serag El Din, head of the opposition in "El Wafd Party " at that time, bitterly criticized the khul' law just upon its inception as being done as a custom-made law for the rich and elite women who could afford to ransom herself by renouncing all her financial right to attain her freedom<sup>149</sup>. In the same vein, others had fears that the khul' law could be misused by women who asks for divorce for frivolous reasons, and to ascertain this conception, two famous films "Mohamy Khul' ", and "Uridu Khul'an" had been produced at that time reflecting the general public depiction by portraying the female protagonist as a rich women leading an extremely luxurious life to the extent that one of them in the film asked for divorce because her husband snores.<sup>150</sup> Hypothetically speaking, such accusation would have a point, yet, practically, the results came contrary to what was expected as according to the court cases analysis and the statistics, as will be illustrated in the study, the poor women and those with inadequate financial resources are more likely to resort to khul' than other kinds of divorce ( in which they do not need to forfeit their rights to alimony and dower) for the following reasons :

- Poor women cannot afford to go through a long litigation process that is almost associated with the "Divorce for Harm" or Abandonment.

---

<sup>149</sup> "Al Sha'ab" newspaper, 28/ January/ 2000, a remark has to be added pertaining to the date of the newspaper, as the article opposing the khul' law came few days after the promulgation of the law , before any practical application for the law to be materialized the fact that makes any presupposed judgment on it inaccurate .

<sup>150</sup> Sonneveld, P. ( 3, 7, 47 )

- Women consider khul' a guaranteed pathway to what should have been a judicial divorce (on the grounds of harm) without probing through its' hassle.
- A poor women has nothing to lose if she relinquishes her advanced and belated dowry as it is almost symbolically written in the marriage contract as (one pound) even if the husbands actually paid more than that, and according to the law she has to return him back only what is registered in the contract (al sadaq al mosama baynana ) . Comparing this to the rich women, her dower ( advanced and belated) could amount to a big sum of money that she could not afford paying, or even if she could afford, she does not want to forfeit it as it could be a future security for her if she gets it through the judicial divorce.
- A poor woman who is self-sustained would easily resort to khul' if she suffers in her marriage since she is not financially benefiting from her husband, and in many cases if she works and earns money, the husband could take her income or else she could be beaten. Of course these practices are customarily associated with low economic and social standards as it rarely occurs among rich people. On the other hand, a rich woman who is married to a man relevantly from her social and financial standard would think many times before departing him as her marriage annulment would let her give up a luxurious comfortable life and the alternative is to bear her financial burdens by sustaining herself which is a great loss.<sup>151</sup>
- A rich women who is more likely to be attributed to a well-known refined family would be so hesitant to resort to khul' due to many considerations pertaining to her social prestige and appearance especially if her husband is also a renowned one or a public figure. She would be even more hesitant if they have children as in this case, many women prefer to opt for a judicial divorce as due to the Egyptian cultural legacy, they would be intimidated of being stigmatized or discriminated by their surroundings.<sup>152</sup>

Moreover, it was quite discernible in the court cases content analysis that the majority, if not almost, of the cases were litigants came from a low economic, social

---

<sup>151</sup> Sonneveld, P. ( 3, 6, 103 ), see also Cornwall P. (40 )

<sup>152</sup> Fawzy , P. ( 46 )

and cultural standards and this was so palpable from their addresses as well as their lawyer's addresses, the fact that support the study's claim and refute accusing the khul' law of favoring only the rich elite. For example, in case of Gihan and Ahmed (see the appendix figure 13), her husband's address (supposedly her former wedlock) is Faysal street in Haram which is not considered a luxurious place but rather a middle-low-class district, meanwhile, it seems that Gihan does not own a separate apartment although she has three children as she indicated in her litigant that she lives with her brother whose address is , also, located in Faysal Street. The same observation has been noticed in all the other ten litigations as Nahla (figure 23) lives in "El Zatun" and both her husband and her lawyer in Dar El Salam(both are poor districts), Ne'mat (figure 19)lives in Talebeyya as well as her husband and her lawyer, same as Hend (figure 18) and her husband Ramy(Talebeyya/'Omraneyya), and also Amal (figure 17)and Ashraf (Talebeyya) , Amal Ragab (figure 14) in Talebeyya and her husband Fouad in Kafr el Gabal, Hoda (figure 4) and Alaa' in 'Omraneya, and same as Sabah(figure 3) and Haroun. Also, their names defines their low social standard (Sabah, Haroun, Metwally, Ne'mat...etc...)

It is also notable to state that the first case of khul' in Egypt has been filed by a Peasant woman who wears a black Galabeya and a headscarf ( a dress-code typically worn in lower economic classes), because her husband was abhorring her and he married another wife.<sup>153</sup>

#### 6) The khul' is accused of enhancing informal marriages:

A furor has been created in the Egyptian society as soon as the PSL law of khul' was enacted accusing the law of enhancing the informal marriages as it gives couples the right to ask for divorce in both formal (officially registered) and informal marriages ('urfi or customary) for the first time as far as the marriage could be proven by any kind of written evidence even if it is unofficial. The marriage registration requirements has only been issued by the end of the nineteenth century within the Ottoman Empire, and although in Egypt a procedural PSL, issued in 1931, does not make the registering of marriage compulsory, yet the law

---

<sup>153</sup> Sonnenveld, P. (6 )

stipulates that “ The courts are prohibited from hearing a claim concerning a marriage when the existence is denied, unless the marriage is established by virtue of an official marriage document.<sup>154</sup> “ A major issue in such a criticism was built up on the fact that women are emotional and irrational beings who need guidance of their husbands, so if they are entitled the freedom to marry and divorce confidentially this would lead the increase of ‘Urfi marriages and accordingly to a social chaos that could end up by a disgraceful ruin for the Egyptian family.<sup>155</sup>

The study seconds the argument claiming that the increase in ‘Urfi marriages would inexorably lead to a social mess as well as disastrous impacts in case of giving birth to children of such undisclosed marriages the fact that could provoke scandalous complications as seen in the famous case of Hind Al Hinnawy and the famous actor Ahmed Al Fishawy that has been brought to the forefront of public discourse in 2004- 2005, and it took her a long time to prove her ‘Urfi marriage and protect the rights of her daughter, let alone the negative psychological drawbacks on both spouses and their kids.<sup>156</sup>

Nevertheless, the study suggests that accusing the khul’ law of being the sole responsible factor for the upturn of the ‘Urfi marriages could be , to a certain extent, a sort of exaggeration as such a clandestine type of marriage was always existing even before the khul’ law’s initiation, and to support this statement, the reasons of ‘Urfi marriages should be carefully scrutinized .

Nadia Sonnenveld conducted an ethnographic fieldwork in Egypt during the period of May 2003 and September 2005 to examine the informal marriages, and the main reasons of such practices were among her findings :

- Sometimes it is a second marriage for a husband who wants to hide his polygamy from his first wife, he resorts to ‘Urfi marriage so that his first wife could not be notified by the notary (ma’ dhun).
- Many young couples who are still in the university enter through ‘Urfi marriages to give their relation-ship a degree of religious legitimacy.

---

<sup>154</sup> Welchman , 2007, P. (53 )

<sup>155</sup> Voorhoeve, P. ( 79 )

<sup>156</sup> Sonnenveld, P. ( 174 ), see also Voorhoeve, P. ( 83 )

- The growth of 'Urfi marriage rates could be highly attributed to the economic crisis and impotency of many of the youths to fulfill the financial requirements of the traditional matrimony ( dowry, house, Shabka...etc...) so they find in this kind of marriage a way to satisfy his needs with less costs. Interestingly, in many secret marriages, it is the women who makes a greater financial contribution, and in some cases, she even marries a man who is her junior.
- Informal marriages could be exploited to find a loophole by many women or widows who wishes to remarry but do not want to lose the state pension of their deceased husbands or their fathers.<sup>157</sup>
- According to (Social Aid and Assistance programme) (SAA), if female beneficiaries want to be eligible for monthly cash payments from the government, they have to prove their dire economic need and that they are divorced or have been deserted by their husbands.
- Many women prefer to keep their marriage confidential as they are divorced and do not want to lose their children's custody.<sup>158</sup>

---

<sup>157</sup> Cornwall, P. ( 39 )

<sup>158</sup> Sonneveld, P. ( 123 ), also see Voorhoeve, P. ( 84 )

## **Chapter Four**

### **Reasons for Khul' :**

It has been recorded that the rates of khul' cases in Egypt had been skyrocketed through the last few years (Post-Revolution), as according to the statistics done by the Information center of the Minister's Council" in 2015, it has been registered that Egypt has ranked the first country around the world in the rates of divorce ( a divorce every 6 minutes), and the majority of which was through khul'. Moreover, the statistics added that the percentage of divorce has been raised up during the last fifty years from 7% to 40%, and has increased again from 1990 till 2013 to reach 143 % according to the latest studies. In fact, this incredible upsurge in divorce rates was due to many structural alterations in the political, economic, social, and religious life of the Egyptians after the 25 January/2011 Revolution that came with some slogans as of "Equality and Freedom" and "Liberation of Egypt is associated by Liberation of women". In many ways, these slogans had not been perfectly understood and utilized by a lot people as perception of the terms "liberation" and "freedom" is proportional from awomen to another according to her social and religious awareness. Moreover, it has been found out that comprehending such principles requires a certain level of education associated and supplemented by an adjacent degree of refined ethical codes .The outcome was satisfactory in some fields and , regrettably, disastrous in many others and among which was the Egyptian Family. Moreover, the united nations international statistics registered a gigantic increase in the divorce rates in Egypt for the year 2014 reaching around 170 thousand cases ranking the first worldwide, and they attributed the reasons to the socio-political and economic havoc which prevailed and was reflected on people's behavior and ideologies, leading to a marked decline in ethics and principles. Accordingly, many bad and unprecedented practices started to surface such as the widespread of drug addiction, the misuse of the Internet, and the lack of ideals and awareness that amounted to the increase in divorce rates.<sup>159</sup>

---

<sup>159</sup> " Al Watan " newspaper official website, Saturdaym 30/5/2015



For more elucidation, the following tables are being presented to assess the variations in the khul' rates in Egypt with special consideration for a comparison of the khul' rates pre and post revolution in order to examine the differences. The first five tables ( from 1 to 5 ) were done by the "CEWLA" Foundation (Centre of Egyptian Women Litigation Association) which is a governmental organization held by most eminent feminist figures in Egypt as Dr Azza Zakareya, Mona Zulficar, Azza Soliman, And Mariz Tadros, investigating the rates of khul' in the family courts of five different governorates throughout the first year of the law in 2000, and the classification has been done according to the reasons of khul' , whereas tables No. ( 6 ) and ( 7 ) were registered by a group of Secretaries of the "Hearings " or (amin ser al jalsa ) as each one was entitled to get the required details from the family courts that he works in. Moreover, the tables were classified according to the number of verdicts issued in five different family courts randomly selected in North Cairo and other five different family courts also randomly selected in North Giza . The selection of the tables ( 6 ), and ( 7 ) was carried out based on the dates of the verdict as pre and post revolution ( years 2010 and 2015 ) as follows :

Cairo Governorate :

By investigating 22 khul' verdicts out of 122 verdicts issued from Cairo courts during the first year of the law ( year 2000) contributing 5,54 % of total the khul' litigations for that year , the following results were divided as follows :

1- wife is afraid not to abide by God's limits	41 % - 9 litigations
2- mal-treatment	27 % - 6 litigations
3- physical chastisement and profanity	14 % - 3 litigations
4- polygamy and desertion	18 % - 4 litigations

## 2 ) Giza Governorate :

1- wife is afraid not to abide by God's limits	42 % - 8 litigations
2 – mal-treatment	32 % - 6 litigations
3 – physical chastisement and profanity	16 % - 5 litigations
4- other reasons	10 % - 3 litigations

## 3 ) Alexandria Governorate :

By examining 6 verdicts out of 28 Khul' verdicts issued by Alexandria courts for the first year of khul' law (year 2000) contributing 4.66 % of total litigations of that year , the following results were divided as follows :

1- wife is afraid not to abide by God's limits	50 % - 3 litigations
2 – physical chastisement and profanity	33 % - 2 litigations
3 - desertion	17 % - 1 litigation

## 4 ) Fayoum Governorate :

By examining 10 verdicts for khul' for the first year of the khul' law , the following results were divided as follows :

1 – dismissing out of the marital house	20 % - 2 litigations
2 – mal- treatment	40 % - 4 litigations
3 – physical chastisement	40 % - 4 litigations

5 ) Sohag Governorate :

Five verdicts had been examined(actually they were the only five for the whole year) during the year 2000, the first year for khul' law in Egypt, the following results were divided as follows :

1- wife is afraid not to abide by God's limits	80 % - 4 litigations
2 - desertion	20 % - 1 litigation

Table No. ( 6 ) investigating khul' and divorce rates pre and post revolution in five different courts in North Cairo :

North Cairo	Khul'	Divorce
Day'rat qism Al Azbakeyya		
Year 2010	83	31
Year 2015	154	56
Da'yrat qism Rod Al farag		
Year 2010	200	89
Year 2015	347	129
Day' rat qism Al Sahel		
Year 2010		
Year 2015	355	178
	550	211
Day'irat qism Al Sharabeyya for		
year 2010	245	105
Year 2015	399	175
Day' irat qism Shobra		
Year 2010	233	122
Year 2015	361	172

Table No. ( 7 ) investigating khul' and Divorce rates pre and post revolution in five different courts in North Giza :

<u>North Giza</u>	<u>Khul'</u>	<u>Divorce</u>
Day'irat Qism Imbaba		
Year 2010	394	165
Year 2015	596	233
Day'irat Qism Al Warraq		
Year 2010	341	193
Year 2015	562	243
Day'irat Qism Bolaq El Dakrour		
Year 2010	356	162
Year 2015	585	259
Day'irat Al Agouza		
Year 2010	<u>188</u>	<u>95</u>
Year 2015	<u>278</u>	<u>136</u>
Day'irat Qism Al Dokki		
Year 2010	168	<u>95</u>
Year 2015	359	<u>161</u>

Remarks on the Tables :

- A huge increase in the rates of khul' is quietly recognized if pre-revolution is compared to post-revolution as the number has almost been doubled after the revolution in nearly all the family courts in tables( 6 )and ( 7 ) the fact that reflects the impact of the economic crisis accompanied by the male-unemployment and the ethical decline in outnumbering the khul' cases verdicts, let alone the litigations that are currently still in front of the family courts.

- The number of khul' verdicts in the rich areas like Agouza and Dokki is much less than that in the middle-class and poor areas like Sharabeya and Warraq for example reflecting the culture of both areas and their educational and social level , and supporting what had previously been stated in this study to refute the claims accusing khul' of being designed only for rich people.
- The percentage of the (khul' due to wife's fear not to abide by God's limits) is the highest in tables (1, 2, 3,5) if compared to the rest of khul' reasons, and especially in table (5) which is (80%) in Sohag Governorate reflecting its' conservative environment where a women believes it is a shame to divulge her husband's secrets, then in table (1) it is 41%, table (2) is 42%, table (3) is 50% indicating that the majority of Egyptian women would be so reluctant to reveal their privacies and that many wives would prefer to keep this confidential .
- The same remark is still noticeable till nowadays through the court cases analysis, as five only out of ten cases stated the reason of khul in their litigation. However, one cannot generalize, as my previous experience in the Kit-Kat family court revealed that this particular aspect seems to be directly relevant to the women's social standard, in addition to her degree of education and awareness with what should be mentioned and what should not.

## **DEMERITS OF THE KHUL' LAW:**

### **FLAWS IN PRACTICAL IMPLEMENTATION :**

1) As stated before, the establishment of family courts faced many deficiencies in practice as the operation system was not that satisfactory for many reasons, some are due to lack of administration and others are due to lack of resources as recognized:

- Litigants are not obliged to attend the mediation sessions and henceforth it turned to be an ineffective process. The attendance of the litigants should be mandatory.

- Judges and mediators in the family courts are providing for the spouses an extremely idealistic and traditional dialogue about duties of each towards the other which, in many cases, this is really ineffective and far from reality especially when the disputes between the spouses is already aggravated.
- The number of psychological and sociological experts who are in charge of handling the disputes between the spouses during the pre-mediation period is not enough if compared to the huge amount of litigants. Besides, many of these experts need to be well-trained as they lack adequate experience to properly function in reconciliation between the couples.
- The family courts had been established inside the old buildings which are already in a deplorable state with proliferation of many courts in each floor, as the new buildings are not yet built due to lack of resources, the fact that makes it difficult for both a litigant, on one hand, to get oriented in absence of directing signs, and in attending the “hearing” in an extremely crowded conciliation office full of employees, judges and other litigants, and the civil workers on the other hand who are expected to properly function in such terrible environment especially during the hot weather of summer in complete absence of air-conditioning.
- Although the khul’ law abridged the litigation time span, yet, in many cases the procedures might be lengthened due to disputes and negotiations with the husband claims around the dowry actual amount that sometimes could be genuine and many other times could be just a maneuvering from his part to prolong the litigation procedures attempting at postponing the ruling.
- Some of the judges persistently require the attendance of the wife either to make sure of her separation intentions or to give the spouses a final chance for a pre-reconciliation attempt, although the khul’ law itself did not make her attendance mandatory as far as she nominates a representative from her side. The judges intentions would aim at favoring the spouses as a trial to patch up, yet, it would be discomforting if the couples were eminent public figures.
- Although the khul’ law came as a life saver to many miserable women, yet in some cases, it is being misused either in high economic standards when the woman is spoiled and she undervalues the meaning of marriage as a sacred bond, accordingly she could ask for khul’ for trivial reasons and this could

almost be seen in the new generations of youth, or in some low social and economical standards especially if the woman is illiterate, or lacking ethical norms, she could easily leave her husband for another man and destroys her wedlock as well as her children's future.

- In many cases especially if the husband is not financially supporting his family, the wife could ask for khul' to benefit from the monthly payment of the state's social aid (SAA) by proving that she is in an urgent economic need of it.<sup>160</sup>
- Some husbands are bartering over khul' by exerting pressure on the wife to increase the amount of ransom to exceed that registered in the marriage contract. i.e. a husband could exasperate his wife by transferring his children from a good school to a bad one for pushing her to succumb to his financial bargains.
- Usually the amount of maintenance assigned by court for the kids is not enough for providing the family's essentialities as the husband is not often submitting to the court a coherent statement of his income and if he works in a non governmental sector or if he is a business man, the wife is unable to prove his actual income in front of the court.
- Although the PSL of 1985 stipulates that the husband who abstains from paying his children's maintenance should be imprisoned within thirty days after the issuing of the ruling in addition to a paying a deterrent, yet, many husbands, especially, in low classes refrain from paying their kids maintenance after the khul' ruling is issued. Accordingly, the government assigned "Nasser Bank" as a governmental establishment to be responsible for paying the monthly alimonies as well as the children's maintenance to their mothers and then collect it from the husbands. However, the Bank congested the monthly payments afterwards due to their failure of collecting these amounts back from the husbands who resorted to many trickeries to eschew paying the money as giving false addresses or bribing the bailiffs to

---

<sup>160</sup> Cornwall, P. ( 39 )

declare them as “out of reach” especially when they are not working in governmental organizations so they are difficult to be traced.<sup>161</sup>

### THE MERITS OF THE KHUL’ LAW :

- Despite all the aforesaid demerits, yet khul’ law is doubtlessly considered a quick and a guaranteed route for a despondent wife to extricate herself from a detested agonized marriage.
- Khul’ enables a wife to divorce herself respectably without being obliged to disclose her marital confidences, or state in front of the judge the disadvantages of her husband in order to maintain her stance, unlike the judicial divorce where the wife has to try hard to prove the harm inflicted on her in front of the court to convince the judge, the fact that incurs an embarrassment and humiliation for her spouse, and sometimes the wife has to involve the children in a testimony finding themselves in direct encounters with their fathers inside the court in hard situations leaving immense psychological blemishes on their relationships as well as their personalities. It has been recognized in the court cases content analysis that five out of the ten court cases stated their reasons for khul’ in their litigation, while the other five did not state any reason and instead they stated that “ they are afraid not to behave within the limits of Allah “.
- Although there are many criticism on the family courts, yet it is undeniable that it’s establishment momentarily contributed in enabling the women to save a lot of time and effort , let alone money, especially the poor ones.
- Khul’ was a perfect solution for the Christians who suffered a lot from the Church’s prohibition of divorce since the termination of marriage is sometimes inevitable and no system can afford to ignore this reality. The persistence on the indissolubility of marriage and condemnation of divorce and overlooking the fact that under exceptional circumstances the annulment of the marital life becomes a necessity would inevitably lead to more crucial

---

<sup>161</sup> <http://www.facebook-“The Communist website. By Hala Dahroug, 1/January/2006 “The poor Egyptian Women Between Husband’s subjugation and the government’ abuse “>



problems as adultery, and any system opposes this reality is impractical and does not respond adequately to human needs.<sup>162</sup>

### Recommendations for better implementation of the Khul' law :

It has been realized through the study that beside suggesting any recommendations for a better implementation to the Khul' law in Egypt, it would be more appropriate and effectual to find also some resolutions and remedies for its causes :

- A well-noticed dichotomy is existing in large between the majority of the Egyptian masses and the Human Rights United nation Charter, henceforth, The Feminists organizations, the NGOs , as well as the women's different governmental organization in the country had to alter their theoretical strategy and to deep delve into the Egyptian women's everyday-life realities through providing a direct-contact channels with her, especially the bread-winner women , and to investigate the most persisting struggles that she is in a daily challenge with in order to be able to offer her a comprehensible assistance<sup>163</sup>. Similarly, the National Conference of Women that took place in Cairo in June 1994 has been intensively criticized for failing to address the Egyptian women's main concerns or to detect the daily hurdles that she encounters, or even to explore her major problems as husband's absence, financial sustenance for her family after divorce, education, raising up her children and providing health care for them, crowded public transportation, the economic crisis etc. The criticizers wondered if it would have been more effective to try to solve these essential problems instead of bringing up many issues that falls out of the Egyptian women's concerns as the philosophy of gender equality and the political role of women.<sup>164</sup>

---

<sup>162</sup> A. Jawwad, P. ( 71 )

<sup>163</sup> Cornwall, P. ( 40 )

<sup>164</sup> "Al Wafd " newspaper, 12/June/1994

- The lawmakers must re-think the khul' legislative laws via the women's right for a custody-support or a custody-maintenance ( nadaqat 'hadana) in return of dedicating her time and efforts for raising the children and inability to work and earn money. Moreover, it's amount could be estimated according to the same criteria of the child's maintenance as to be proportional to the husband's income, and equivalent to the a nanny's salary
- Complexities of issues and strict state's regulations should be abolished and resolved as exemplified in many ways. i.e. the inclusion of a question addressed to the wife in the marriage contract weather she receives a pension from the state as an inheritance from a deceased husband or father, being now married and under the financial responsibility of her husband, she is no longer eligible to receive her governmental pension . This law is a modern one, since the government pensions did not exist before 1860's, and it has to be changed as it enhances many extremely poor women, in case of their father's death, to prefer divorcing their non bread-winner husbands and enter through informal marriages as they could not afford losing their governmental pension.<sup>165</sup>
- There should be a national trend towards tackling the new phenomenon of the rapid rise in the divorce rates that jeopardizes the Egyptian family and leads to the increase of homeless-children (atfal al shaware'e) who could easily convert to be future terrorists, thieves or drug-dealers instead of going to schools and benefiting their societies. A big national campaign comprising many governmental institutions as well as non-governmental civil society organizations (NGO), hand-in-hand, should be inaugurated with well-defined targets and long-termed plans.
- Extensive training sessions should be held for the psychologists, the sociologists and the political experts whom are entitled for the reconciliation between the two spouses to better function their roles instead of doing their jobs as employees.
- The ministry of Justice could open the reconciliation offices for any disputed spouses regardless of filing a khul' case as a prerequisite, where they inform the couples with the perils that would threaten the future of their children as

---

<sup>165</sup> Sonbol, "History of Marriage Contracts", P. ( 30 )

a result of divorce in general, to increase the awareness and to perceive more the value of their marital bond. This suggestion could truly be more effective if applied to newly-wed couples, as the United Nations statistics indicated that the highest percentage of divorce in Egypt lies within the age of 20-30 .

- The Health Ministry also could have a fundamental role in this campaign through the pre-marriage health check-ups and by establishing two hotlines, one for the wives in which a female doctor would receive their queries and provide them with adequate answers to avoid embarrassment, and the other is for the husbands where a male doctor answers all their investigations soundly in order not to resort to illicit sources that could provide them with false information and practices. Doubtlessly, this would provide the couples with complete health instructions, solve any health problem, and raise up the awareness of both the girl and her spouse alike, and it is highly recommended to go through all these procedures before entering into a marriage relationship.
  - The Ministry of Culture could also have a role in such a campaign by several means: giving seminars on how to marginalize divorce and disdain its causes by more tolerance in the marital relationships , printing brochures illustrating the demerits of divorce and it's disastrous impact on the society, producing T.V. ads through the governmental channels which is accessible to everybody, as well as the private sectors alike with easily comprehended slogans addressing even the illiterates with simple language about the significance of marriage as a social union to form a strong family .
- Invariably, the mass media was always an exceptionally strong tool in shaping the masses ideologies and shaping their patterns of thought, and the Egyptian films could be a perfect demonstration to that.
- i.e. "Uridu Hallan " <sup>166</sup> is one of the remarkable films in the history of the Egyptian cinema due to it's unforgettable role in changing the PSL in Egypt and the appearance of the law no. 44/1979. Of course all these efforts

---

<sup>166</sup> "Uridu Hallan", an film for the Egyptian famous writer Husn Shah that has been produced in the 1970's dealing with women's inaccessibility to divorce in a patriarchal society, and it has been stated afterwards that this film played a prominent role in convincing President Sadat to amend the PSL and his wife Gihan Sadat was behind this development., also see Soneveld P. 4, 73. 101

should be undertaken under the supervision of renowned mass-media experts, and the NGO should be invited to contribute in such a campaign.

- The Azhar and the religious establishments also should have a big role in this campaign by engendering the religious awareness and teaching people the Islamic provisions, as a big part of the problem lies in people's ignorance with the primary information about their religion with its principles that are based on tolerance, equality and justice. Both the husband and the wife need to know their religious duties towards each other and behave with mercy and kindness as stated in the holy Qur'an.
- Establishing a website especially designated for this campaign would be an effective mean of connecting Egyptians with each other and sharing suggestions, plans and start materializing to benefit the society.
- The religious institutions, and on top of which is Al Azhar, should try to rethink its outdated system and develop its religious speech to suit the age's exigencies to be able to address the masses soundly and to have an actual role in tackling many societal problems. This development would be mandatory as to provide accessibility channels to disputed couples on one hand, and to improve the picture of Islam internationally on the other hand, as the western narrative of Muslim man is a version that implies a kaleidoscopic array of garbled and misconstrued beliefs augmented by wrong patriarchal practices which make Islam susceptible of misapprehension.
- Before liberating herself physically, the Egyptian women needs to liberate herself intellectually in a society controlled by a legacy of archaic misogynist beliefs and social stresses defining her actions and mostly leading to wrong and hasty decisions that ends up with khul'. For more elaboration, a family's choice for their daughter's future -husband should be re-evaluated as some families choose according to the economic standard regardless of the ethical or social compatibility (Kafa'a) which is a staunch principle in Islamic marriage jurisprudence, while many other women would accept any proposal for marriage even if the spouse is unsuitable for her either to eschew spinsterhood or because the societal pressures had became too great and she is no longer able to endure the way her

neighborhood are gossiping about her single status. Doubtlessly, the majority of such marriages end up to a failure.<sup>167</sup>

- The Ministry of Education would play the most vital role in this campaign through introducing a new subject that teaches the students the meaning of a family, how to choose the spouse, how to raise up the children, how each spouse would behave with his partner in a way that makes the Islamic family capable of building the society. In addition, this subject should be added the syllabus in the primary stage in a compulsory basis and for all the students in all schools, even the International ones. It would be interesting here to state that this idea is not an innovation but rather a tradition since the Khedive Ismail's reign (1863-1879), who declared "the schools are the base of every progress", and subsequently he instituted an Educational Committee through which "Ali Mubarak" (1824- 1893), a member of the Committee, commissioned Rifa'ah Rafi' Al Tahtawy, a prominent Azhari Scholar (1801-1873), to write a textbook suitable for schoolchildren of both sexes, His "Al Murshid Al Amin lil Banat wal Banin"(a guide for girls and boys), published in 1870's and was considered a directory including a collection of pieces on a variety of subjects among which were chapters on teaching girls and boys at school how to create a harmonious marriage and how to make a marital relationship successful.<sup>168</sup>
- Although the khul' law entitles the wife a right to stay in the marital house in case of having children, yet a major problem could arise after the custody period finishes, as neither every woman could afford providing herself with a residence, nor she is capable of remarrying as she could be old, homeless, illiterate, poor, or sick. A recommendation is needed that the government should consider any of those cases an exceptional case and help the divorced women to find a suitable shelter and not to be kicked out of the marital house in an old age.
- The fact that the rate of khul' is skyrocketed within the poor illiterate women brings up questions of how far is her awareness of the value of marriage and to what extent does she deem it as a sacred bond? As it has been noticed that this section of the society does not value the marital life as

---

<sup>167</sup> Voorhoeve, P. ( 89 )

<sup>168</sup> Leila Ahmed, "Women and Gender in Islam", P. ( 136 )

before, and as far as the khul' is available with the least minimum expenses, women is opting to it regardless of her family and children, in a perplexing issue has a lot to do with immense lack of moral values . Therefore, the study suggests that the judiciary should raise the khul' expenses as this change would only address this particular segment of the society, as for the rich women, a raise in the khul' expenses would remain a marginal one that is not making any difference in her decision taking as regards the khul'.

## **Conclusion**

Although the khul law's canonization is considered a feminist victory, yet what is more important than khul's law implementation is to get people to comprehend the language of the law itself, its spirit and what it is aiming for. Similarly, it is not enough to have family court reform with many amendments, but what concerns more is to get people to actually invoke how to practice it soundly, objectively, rationally and amicably. The harvest of 15 years of khul' was not stupendously successful, being handcuffed by cultural and religious impediments. Besides, the drawbacks which occurred to the Egyptian society due to the turbulent political arena that greatly affected the social, economic and religious life in the country had negatively impacted people's behavioral patterns and re-shaped their thoughts, leading to a big fracture within the Egyptian Family ended up by an escalation of the khul' rates. In addition, the study has shown that notions of men and women's actual roles in marriage and society are static and unchangeable although the everyday life realities defy it. This, in fact, ascertains that the legal reforms are not the end result in itself, for a reform, in order to be meaningful, has to provoke positive and significant alterations in the lives of those whom it targets and addresses. Of course, this entails adequate and effective mechanisms of implementation and enforcement as well as a supportive environment through working at the grassroots level, by lobbying various efforts together to build a support among different sectors of the society (religious scholars, Islamic NGOs, legislators, families and communities) through dialogue, awareness raising, and partaking in the process of imparting to new generations enlightened religious knowledge and sensibilities that are appreciative of justice and equality. Notwithstanding the jurisprudence efforts, however, the substantive reforms must be dealt with, on a long-term view, as temporary expedients and piecemeal accommodations for a foreseeable future. Invariably, the present efficacy of the amendments in tackling the khul' issue could not be denied, yet in some cases, novel provisions lie in uneasy juxtaposition with the society's traditional beliefs, and unescapably pointing towards the direction which the future progress has to follow. Accordingly, it is a miss to believe that the problem lies in the khul' law promulgation, but rather to the wrong practices of its' implementation. It is true that

the Qur'anic legislation on divorce aims at protecting women and allowing them to free themselves from the marital bond if it becomes a torture, and despite the big strides taken by the Islamic jurisprudence, yet the overall situation still remains far from perfect. Hence, more amendments in khul' proceedings in general are still urgently and sorely needed, and a particular attention should be also directed to the investigation of the motives for khul' on the part of both men and women.



## **Bibliography**

### **Primary sources:**

- A concise Encyclopedia of Islam, Cyril Glasse, Stacey International, London, 1989, P. (100) Sunan Abu Dawoud “ Bab al Talaq (2177), Sahih Muslim No (671), Ahmed (4/181)
- Al Bukhari, Al Hafiz Ahmed Bin Ali Bin Hajar Al ‘Asqalani, 773-852hijri, “Fath Al Bai Bi Sharh Sahih Al Bukhari”, Al Salafeyyah Press, Cairo- Vol.7.Third edition 1407hijri, 46 Amman square .Dokki- Egypt.
- Ibn Hazm, al Imam Abi Mohamed Bin Ahmed Bin Saiid, (456 Hijri) Edited by Dr. Abdel Ghafar Al Bindary, Part 9, Beirut: Dar Al Kotob AL ‘ELMEYA
- Ibn Kathir, Abu Al Fida’ Ismail Al Dimishqi,: “Tafsir al Qur’an Al Azim”, Dar Al Ma’arif, Beirut 1969, P. 275 First Edition
- Ibn Kathir, Al Imam Al Hafiz Abi Al Fidaa’ Ismai’il Ibn Kathir Al Qurashi Al Dimishqi, : “Tafsir Al Qur’an Al ‘Azim”, Dar Al Ma’arifa, Beirut, Lebanon.vol.(1)
- Ibn Qudamah, Al Imam Abi Moahedm Ibn Abdullah Ibn Ahmed Ibn Mohammed, (620 Hijri). “Al Moghny”, Part8, AL RIYADH: Maktabet AL RIYADH Al Hadithah, 1981
- Ibn Rushd, Al Imam Al Hafez Ibn Al Walid Mohammed Ibn Ahmed , “Bidayyat Al Mujtahid Wa Nehayyat Al Muqtassid”, Maktabat Al Koleyat Al Azharreyyah 1969
- Ibn Tayyimiyya, Shaykh Al Islam Taqi Al Din , : “Majmu’at Fatawa Shaykh Al Islam Taqi Al Din Ibn Tayyimiyya”. 5vols.Cairo:Maktabat Kurdistan, 1326-29/1908-11
- Quranic Verses: (30:21), (2:229), (2:228), (2:187), (4:4), (4:35), (33:37), (4:19), (4,20,21) (34:4)
- Sahih Muslim, Book of “Irda’a”, Bab Al Waseya Bil Nisa’a” Hadith no. 1469

### **Secondary sources**

- “Al sha’ab” newspaper, (P.2, 21/01/2000), 31/12/1999, 28/1/2000
- Abdou, Mohamed. “Taqrir Islah Al- Mahakem al Shar’iya” Vol. 2. Cairo. Dar Al Amal Lilkitab
- Abdullah, Dr. Al Sayed Abdel Hakim,: “Al Talaq Wal Khul’”, Dar Al Afaq Al Arabeya Press, 2014

- Abo Zahra, Mohamed, "AQD AL Zawaj Wa Atharoh" 1958. Ma'had Al Dirasat AL Arabeya Press
- Abo Zeid, Mostafa, "Al Khul' Al Masry Wal Khul' Al Islamy wa Awgoh al Ta'n Bi awda'oh Al Dosturiya. Article in al Ahram newspaper, issue no. 41346, (P.28) 18/2/2000
- Abu Odeh, L. "Modernizing Muslim Family Law: the case of Egypt". Oxford University Comparative Law Forum 3, <http://ouclfiuscomp.org/articles/abu.odeh.shtml> (Accessed 18th December 2009)
- Adam, M.K, "The Islamic Notion of Marriage and Divorce", op. cit p.64
- Afifi, Mohamed. "Christians in the Ottomman Period", Cairo, General Organization for Books 1992, series of the "History of Egyptians" 54, P. 226, 227, 233
- Ahmed, Leila, "Women and Gender in Islam". Historical Roots of Modern Debate. Yale University Press, New Haven & London 1992
- AL AHRAM NEWSPAPER, "Marital Dichotomy, is Prohibited by Shari'ah" P.23, issue of 17/04/2015
- Al 'Awwa, Mohammed Selim, " Mashrou' Qanoun El Ahwal El Shakhseya", Al Ahram Newspaper No. 41314, P. 10. 17/01/2000
- Al Ghandour, Ahmed, (1967-1378 Hijri) : "Al Talaq Fi Al Shari'aa Al Islameya Wal Qanoun" : A comparative study: First Edition, Misr, Dar Al Ma'arif. Cairo.
- Al Hilali, Dr. Muhammad Taqi-ud-Din, "Interpretation of the Meanings of the Noble Quran (in the English Language) a summarized Version of Al- Tabari, Al qurtubi and Ibn Kathir with comments from Sabih Al Bukhari, Darussalam Press P. 543. In one Volume. Riyadh. Saudi Arabia 2007
- Al Kholy, Al Bahey, : "Al Islam Wa Qadaya Al mar'a Al Mo'asera", Dar Al Bashir Press. Tanta Egypt. 200- 1420 Hijri
- Al Maraghi, Abdullah, "Marriage and Divorce in all the Religions". Supreme Press 2000.
- Al Mishny, Manal Mahmoud,: "Khul' in the Personal Status Law", its' Provisions and effects". A comparative study between Jurisprudence and Law. 2008 First Edition. Dar Al Thaqafa Press. Amman- downtown.
- Al Sawi, Dr. ahmed, "The Harvest", with Dr. Hoda Zakaria, Dr. Azza Soliman, Dr. Azza Saleh, Dr. Marie Tadros. CEWLA Foundation Press 2003. Second Edition
- Al Semary, Dr. Adly,: "Khul': A study in Sociology". Dar al Nasr for Distribution and Publishing 2000.

- Al Sharmani, Mulki, "Egyptian Family Courts: Pathway to Women Empowerment". Hawwa Journal of Women of the Middle East and the Islamic World, No. 7, pp. 89-119
- Al Subki, Taqi Al din: "Kitab Al Fatawa". 2 vol Cairo: Matba'at al Qudsi, 1937
- Al Wafd (11/02/1995)
- Anderson, Norma: "Law Reform in the Muslim World". University of London. The Athlone Press 1976.
- Booley, Ashraf: "Divorce and the law of Khul': A type of no fault divorce found within an Islamic legal framework .", Periodical of Law Democracy and Development, Volume 18 (2004). P. 43
- Cairo, Family court, Kit- Kat square- Omraneya Court, behind Ministry of Culture. Giza. Imbaba.
- Cairo, Shahr Aqari, Sigil Madani, Azbakiya
- Cairo. Dar al Wath'iq al- Qawmiya. Shari'a Court records: Alexandria, Armant, Assiut,
- Cairo ( Bab al- Ali court, Misr, Misr Al Qadima). Dishna, Dumyat, Isha, Manfalut, Qusay, Sijillat Dasht.
- Cornwall, Andrea and Jenny Edwards, : "Feminisims, Empowerment and Development". Zed Books LTD, 7 Cynthia Street, London N1 9JF, UK, and Room 400, 175 Fifth Avenue, New York, NY 10010, USA. 2014
- Coulson, Noel J, "A History of Islamic Law". Edinburgh University Press George squad. Edinburgh. Hodder & Stoughton LTD, 429 Kent street, Sydney
- Dorph, K. Jan: Islamic Law in Contemporary North Africa: A study of the Laws Of Divorce in the Maghreb" in Azizah al Hibri (ed) "Woman and Islam" Pergamon Press London 1982. P.172
- El Alami, Dawoud S: "The Marriage Contract in Islamic Law" in the Shari'ah and Personal status Law of Egypt and Morocco. Graham and Tortman Ltd. Sterling house. 66 Wilton Road. London SW1V IDE. UK 1992
- Fahmy, Mahmoud (Judge), " Ahkam Al Khul' between Shari'a and Law" Article in Al Ahram Newspaper, No. of issue 41319, (P.10) 22/1/2000
- Fawzy, Mahmoud,: "Khul' between Islam and Christianity". Nahdet Misr Press. 2003
- Guirguis, Magdi,: "Marriage and Divorce of Christians In front of the Legislative courts in the Ottomman Era". Issued in Rosnama, "Al Hawleya al Masreya for Documents, Issue no. 5, 2007 from p. 141-156

- Kapur, r. and B. Cossman (1994) Subversive site: Feminist Engagement with Law in India, sage Publication, New Delhi.
- Kordy, Dr. Jamal Mahmoud, “Khul’ in the special International law”. Tanta University, study on the spirit of Laws” issue no. 46/ august 2008, Dar Al Nahda Al Arabeya Press 32 Abdel Khalik Tharwat st. Cairo
- Linant de Bellefonds, Yvon, 1965. Traite’ de droit musulman compare Vol. 2: Le mariage, le dissolution du mariage. Paris and The Hague. Mouton and Co, By Nadia Sonneveld, 2014
- Lombardi, Clark, 2006. “State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari’a into Egyptian Constitutional Law”. Leiden: Brill.
- Maugiron, Nathalie Bernard, “Breaking up the Family: Divorce in Egyptian law and Practice” CIRD, UMR 201, Cairo, Egypt, with the collaboration of Baudouin Dupret ( NRS, ISP, Cachan, France)
- Mashhour, Amira, “Islamic Law and Gender Equality: Could there be a Common Ground?” A study of Divorce and Polygamy in Shari’a Law and Contemporary Legislation in Tunisia and Egypt. Human Rights Quarterly. Page (562-596). Vol. 27, No. 2, ( May 2005) the John Hopkins University Press.
- Mernissi, Fatima,: “Beyond the Veil”, Male- Female Dynamics in Modern Muslim Society. University of Rabat Press. Dar Al Saqi 1985
- Mutawai, Judge Amir Mohamed, “Khul’ between Shari’aa and Law”, Nadi al Qudah Press 2016.
- Qassim, Dr. Youssef, “Huqouq AL OSRA FI AL FIQH AL ISLAMI” : Dar Al Nahda Al Arabeya Press. Cairo 1984- 1403 Hijri
- Schacht, Joseph, “An Introduction to Islamic Law”, 1964 ( O.U.P) New York Press. 1969
- Schultz, Dorothea E. 2003: “ Political Factions, Ideological Fictions: The Controversy over Family Law Reform in Democratic Mali: “Islamic Law and Society 10 (1): 132- 64
- Shams El Din, Dr. Mohamed Ja’far,: “ AL NIKAH WA AL TALAQ WAS TAWABI’OH”. Dar Al Hady Press. First Edition 2008- 1429 Hijri
- Signerman, Diane,: “Rerewriting Divorce in Egypt: Reclaiming Islam, Legal Activism and Co-alition Politics.” Princeton University Press 2005
- Sonbol, Amira Al Azhary, “Muslim Woman, Marriage and Obedience”, 2007
- Sonbol, Amira El Azhary, “ Woman of the Jordan: Life, Labor and Law” Georgetown University. 2003
- Sonbol, Amira El Azhary, “Citizenship, Guardianship and Gender: Peripheralization of Women in Modern Egypt” Georgetown University. 2005

- Sonbol, Amira El Azhary, "History of Marriage Contracts in Egypt", (10809 Cross School Rd., Reston, Va 20191) Georgetown University. Journal Article 2005. Hawwa, Vol. 3 No. 2 ( June 2005)
- Sonbol, Amira El Azhary,: "Woman, the Family and Divorce Laws in Islamic History", Syracuse University Press 1996.
- Watt, W. Montgomery, : "The Role of Legal History in Muslim Jurisprudence", 1968, Yale University Press, New Haven & London.
- Welchman, Lynn, 2007, "Women and Muslim Family Laws in Arab States: A comparative Overview of Textual Development and Advocacy". Amstredam: ISIM/ Amsterdam University Press.
- Zulficar, Mona. 2008: " The Islamic Marriage Contract in Egypt". In the Islamic Marriage contract case studies in Islamic Family Law, Edited by A. Quraishi and F. E. Vogel, 231-74, Mass Harvard University Press.